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# Weak States, Strong Elites and Acquiescent Donors:

State-building and aid relationships in the  
Democratic Republic of Congo 2006-2016

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**WEAK STATES, STRONG ELITES AND ACQUIESCENT DONORS:  
STATE-BUILDING AND AID RELATIONSHIPS IN THE DEMOCRATIC  
REPUBLIC OF CONGO 2006-2016**

**Summary**

This thesis contributes to theories about aid negotiations by researching how development assistance for state-building has been negotiated in a fragile state, the Democratic Republic of Congo (DRC). Using qualitative methods, mainly in the form of semi-structured interviews, I explore how, in the context of the various structural factors that surround the negotiations, the different actors have tried to influence these factors to their advantage and what strategies the donors and the government have used to reach their objectives. In contrast to countries such as Rwanda and Uganda, I found that the Congolese government hasn't tried to use image management to 'sell' itself to the donors. Instead, its strategy has been to increase its negotiation capital by taking an aggressive approach in discourse with the donors. Donors have struggled to have a constructive dialogue with the government and have been reluctant, due to international norms of ownership and previous experiences, to use conditionality as a negotiating strategy.

To see how the strategies employed by donors and the government varied depending on the sector and level (central – district) at which engagement was taking place, I reviewed two large donor-funded programmes; one in the health sector, the other in the justice sector. I found that the strategies used in the two sectors did indeed vary quite substantially, with the consequence that the donors had more influence in the health than in the justice sector.

To add to the complexity, Congo is what researchers have described as an archetype for a hybrid state, where the state is sharing its authority and legitimacy with a large number of non-state actors, such as customary chiefs and faith-based organisations. In this thesis I explored what this meant for donor efforts to build state-capacity and how it affects aid negotiations. I conclude with the recommendation that donors would benefit from working more closely with non-state actors in their efforts to build state-capacity.

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Map 1: Democratic Republic of Congo with provinces prior to July 2015 (source: ezilon.com)



Map 2: Democratic Republic of Congo with current provinces (source comersis.com).



## Table of Contents

Acknowledgements .....	<b>Error! Bookmark not defined.</b>
Abbreviations .....	xii
Chapter 1: Introduction .....	1
1.1. Introducing the research topic .....	1
1.2. Contextualizing state-building and aid relationships .....	3
1.3. Research aim, purpose and rationale .....	10
1.4. Some considerations on terminology .....	14
1.5. Research design and methodology .....	16
1.6. Caveat of the study .....	26
1.7. Structure of the thesis .....	27
Chapter 2: Conceptual Framework .....	29
2.1. Introduction .....	29
2.2. The context of engagement and structural factors .....	30
2.3. Negotiation strategies .....	39
2.4. Negotiations within different sectors and different levels of engagement .....	46
2.5. Real governance, predation and state building .....	49
2.6. Towards a conceptual framework .....	53
2.7. Conclusion .....	56
Chapter 3: State Failure and Aid in Congo .....	57
3.1. Introduction .....	57
3.2. The turbulent history of Congo .....	58
3.3. Political culture, power and the functioning of the state administration .....	74
3.4. The current state of Congo – Heading towards a collapse? .....	79
3.5. Contemporary development assistance to Congo .....	81
3.6. The functioning of the health and justice sectors .....	88

3.7. Conclusion .....	100
Chapter 4. The Contemporary Engagement Between Donors and the Government – a Complicated Relationship.....	101
4.1. Introduction .....	101
4.2. Perceptions of self and others .....	101
4.3. Creating and using bargaining spaces.....	113
4.4. Who needs whom? .....	125
4.5. Donors without influence in Kinshasa .....	127
4.6. Conclusions .....	130
Chapter 5: Divergent Perceptions and Strategies in the Health and Justice Sectors.....	132
5.1. Introduction .....	132
5.2. The return of the donors, and their engagement with the state .....	133
5.3. Contextual factors framing the negotiations: Perceptions, political will and ownership .....	137
5.4. Engagement strategies .....	148
5.5. Local level engagement through intermediaries .....	161
5.6. Conclusions .....	166
Chapter 6: Donors and State Struggling with Hybridity and Real Governance.....	169
6.1. Introduction .....	169
6.2. The reasons for the dominance of real governance and hybridity in Congo .....	171
6.3. real governance and hybridity in today's Congo .....	175
6.4. Donors' struggle with the real governance and hybridity .....	185
6.5. Conclusions .....	192
Chapter 7: Conclusions.....	195
7.1. Introduction .....	195
7.2. Summary of the key findings .....	196



7.3. Contribution of the thesis, policy recommendations and areas for future research.....	202
Epilogue.....	210
Bibliography .....	215
Annexes .....	249
Annex 1. Profile of respondents.....	249
Annex 2. Attended events.....	249

## List of tables, maps and figures

Map 1:	Map of Congo. Provinces before July 2015.....	Page vi
Map 2:	Map of Congo. Provinces after July 2015.....	vii
Table 1:	The three pillars of the New Deal.....	6
Table 2:	Privatization of Government Expenditures .....	67
Table 3:	Top then ODA recipients in Africa .....	83
Figure 1:	Conceptual model for aid negotiations .....	55
Figure 2:	Trends in aid to Congo.....	82
Figure 3:	Top ten donors to Congo, 2015-2016 .....	87
Figure 4:	Health pyramid.....	91
Figure 5:	Approval rating institutions.....	112
Figure 6:	Approval rating countries.....	112
Textbox 1:	Kabila the choice of the West? .....	71

## Abbreviations

ABA	American Bar Association
ACP	African Caribbean and Pacific states
ADLF	Alliance des forces démocratiques pour la libération du Congo-Zaïre
ASF	Avocats Sans Frontières (Advocates Without Borders)
ASSP	Accès aux soins de Santé Primaires (Access to Primary Health Care)
AU	African Union
BDOM	Bureau diocésain des œuvres médicales
BTC	Belgian Technical Cooperation
CIAT	Comité International d'Accompagnement de la Transition
CMJ	Comité mixte de la justice
CODESA	Comité de développement de l'aire de santé
COFED	Cellule d'appui à l'ordonnateur national du Fonds Européen de développement
CSM	Conseil Supérieur de la Magistrature
CSO	Civil Society Organisation
DAC	Development Assistance Committee
DEP	Department for Research and Planning
DFID	Department for International Development
DPS	Direction Provinciale de la Santé (Provincial Health Office)
DRC	Democratic Republic of Congo
DSCR	Document de stratégie pour la croissance et la réduction de la pauvreté
ECA	European Court of Auditors
ECC	Eglise Christ de Congo
EDF	European Development Fund
EU	European Union
EUD	EU Delegation
EZB	Equipe Cadre de la Zone de la Santé (Zonal Health office)
GCP	Groupe de Coordination des Partenaires
GPE	Global Partnership for Education
FBO	Faith-Based Organisation
FDLR	Democratic Forces for the Liberation of Rwanda
FARDC	Forces Armées de la République Démocratique du Congo
GIBS	Groupe Inter-Bailleur santé (health donor group)
HDI	Human Development Index
HHI	Harvard Humanitarian Initiative
HQ	Headquarter
ICC	International Criminal Court

ICG	International Crisis Group
ICTJ	International Center for Transitional Justice
IMA	IMA World Health
IMF	International Monetary Fond
INGO	International Non-Governmental Organisation
IRC	International Rescue Committee
ISSSS	The International Security and Stabilization Support Strategy
MoFA	Ministry of Foreign Affairs
MoH	Ministry of Health
MoJ	Ministry of Justice
Monuc	Mission de l'Organisation des Nations Unies au Congo
Monusco	United Nations Organization Stabilisation Mission of the Congo
MoP	Ministry of Plan
MPR	Mouvement Populaire de la Révolution
NGO	Non-Governmental Organisation
ODA	Overseas Development Aid
OECD	Organisation for Economic Cooperation and Development
OHADA	Organisation pour l'Harmonisation en Afrique du Droit des Affaires
PARJ	Programme d'Appui à la Réforme de la Justice
PE study	Political Economy study
PNDS	Plan National de Development Sanitaire (National Health Sector Plan)
PRSP	Poverty Reduction Strategy Paper
PPRD	People's Party for Reconstruction and Democracy
RCI	Renforcement des Capacités Institutionnelles
RCN	RCN Democracy and Justice
REJUSCO	Programme d'appui à la restauration de la Justice à l'Est de la RDC
RFI	Radio France International
SDG	Sustainable Development Goals
Sida	Swedish International Development Cooperation Agency
SGSR	Special Representative of the Secretary-General
SRSS	Strategy to Strengthen the Health System
STAREC	Stabilisation and Reconstruction in Eastern Congo
SWAP	Sector Wide Approach
TA	Technical Assistance
ToR	Terms of Reference
UDPS	Union pour la Démocratie et le Progrès Social
UN	United Nations
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund

USAID  
WB

United States Agency for International Development  
World Bank

## Chapter 1: Introduction

### 1.1. Introducing the research topic

The first time I visited the bustling city of Kinshasa, the capital of the Democratic Republic of Congo (DRC)<sup>1</sup>, was in September 2011. I was there to work in the development section of the Swedish Embassy and was excited by the opportunity to get to know this vast country. I was also looking forward to working with other donors and the government hopefully to improve, if even only in a small way, the situation in Congo. However, one of the first things that struck me was the considerable tension between the donor community and the Congolese government. I had worked in other countries before and knew that the relationship between donors and governments was not always smooth, but I had never experienced the degree of hostility I observed.<sup>2</sup>

From my very first day I was told by colleagues that the government lacked the political will to develop the country and that I should be cynical in my views on the Congolese state when reporting back home to Headquarters. In both formal and informal meetings between the donors, there were plenty of references to how cunning and manipulative the government was – and how it was taking advantage of the donors. Despite this, the donors continued to support activities intended to deliver a number of reforms aimed at building capacity in a state that they did not trust. Even more confusing was that despite the lack of trust most of the aid being provided was without conditions attached. To paraphrase one Congo expert: *‘they (the donors) seemed determined to rehabilitate the state at all costs, with or without Congolese involvement’* (Trefon, 2011 p. 7). It soon also became clear that they felt rather alone in this process and rather powerless in delivering reforms. Curiously though, I rarely heard the donors reflecting on their own shortcomings and their possible responsibility for reform failures.

The government, with its deeply embedded patrimonial system, seemed unwilling or incapable of implementing reforms promoted by the international community.

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<sup>1</sup> Throughout the text the term ‘Congo’ is used to refer to the Democratic Republic of Congo (DRC), although for the period 1971 to 1997, when the country was called Zaïre, this term is used.

<sup>2</sup> I have been working and living in Lao PDR, Zambia and in the Occupied Palestinian Territories.

It often took a tough stance with the donors. As a consequence, the relationship was constantly fraught with tension that occasionally erupted into open confrontation. The government's tough stance was especially interesting considering that the government was so dependent upon aid: aid represented between 30-40% of the state budget.

Any observer would wonder why the relationship was so hostile, and why the donors continued to engage with Congo, despite the government's tough stand against the donors and its repeated failures in implementing the reforms suggested by the donors.

As many scholars have already noted there are some major contextual factors as to why Congo matters for Western donors, and they feel that they can't abandon it. It is the second largest country in Africa and it has a population of approximately 80 million people. The poverty rates are extremely high, with around 80% of the population living on under 1.90 USD per day ([wdi.worldbank.org](http://wdi.worldbank.org)). It has immense natural resources with around 1 300 different minerals (Trefon, 2016). It borders nine other countries and what happens in Congo has the potential to impact the region, including countries like Angola, Rwanda and Uganda to which many donors have close ties. Hence, donors are keen to see a stable Congo. They also want transition from the provision of humanitarian aid, significant levels of which have been provided for the last 25 years, towards longer term development assistance.

Given this specific context and the donors commitment to staying in Congo, I was intrigued by how they within this context were trying to secure as much as they could for their state-building effort through aid negotiations, and what strategies they were using to convince the ruling elite to implement their agenda. I was also curious to discover what strategies the government used to secure a continued inflow of aid and how they tried to maintain autonomy in this process by avoiding donor-imposed conditionality. I decided to focus my main research question on:

- What explains the strategies that Western donors use when engaging with the hybrid and predatory Congolese state to advance their state-building agenda and how does the Congolese government respond?

To answer the question, I have used qualitative research methods mainly in the form of semi-structured interviews with people involved in or with insights into aid negotiations, such as donor officials, diplomats, government officials, civil society representatives, academics and consultants. In total, I interviewed 117 people during three field-visits over 2014 – 2016. Some of these interviews were used as background information, whereas others were used to cast light into the actual negotiations and engagement between the donors and the government.

This chapter will start with contextualising state-building and aid relationships in fragile and hybrid states, before presenting the research aim and the research questions. I then go through considerations on terminology and key limitations and challenges of the study, before presenting the research design and methods that I have been using. I will also go through issues related to positionality and reflexivity.

## 1.2. Contextualizing state-building and aid relationships

State-building in fragile states has increasingly become a key priority for the international community following the end of the Cold War and the fight against terrorism (Marquette & Beswick, 2011, p. 1704). There is increasing recognition that global security and poverty challenges are concentrated in fragile and conflict-affected states. By 2030 it is estimated that 50% of the world's poor will be living in fragile states (World Bank, 2017, p. 41). This has led donors to considerably increase their support to conflict - and post-conflict countries (IPI, 2012, p. 1; OECD, 2011, p. 1).

This increased focus on fragile states and state-building has given rise to a heated debate around these terms. The concept of fragility has been questioned by academics who have highlighted the potential of abuse of the category of state fragility, legitimising external intervention at the expense of local agency (Grimm, Lemay-Hébert, & Nay, 2014). The analytical utility of the categorization effort itself has also rightly been disputed. It is argued that the grouping together of a wide range of diverse countries leads to highly standardised development responses that do not take into account often highly divergent political, economic and social conditions (OECD/DAC, 2007; Putzel, 2010, p. 1). In this thesis I will focus more precisely on so-called 'predatory states', which arguably is a rather extreme form



of fragile state. I will discuss the term predatory state in more detail later in this section. Researchers and practitioners are also struggling with what is meant by 'state' and 'state-building'; the most widely used definition being from Weber, who defined the state as 'an entity that successfully claims a monopoly of the legitimate use of physical force within a given territory' (Fukuyama, 2004, p. 6). Tilly in his important work on the state formation in Europe made the famous aphorism 'war made the state, and the state made war', and that war can sometime be the basis for state-building. He identified four different activities of the state: a) war making; b) state-making by which he meant the act of eliminating internal rival forces and insurgents from within its own territories; c) protection meaning the elimination of potential threats to the their population; and d) extraction of securing means to execute the previous three activities, such as the collection of taxes or revenue. There has been some debate regarding the applicability of the war-making/state-making beyond Europe. Research by, for example, Taylor and Botea (2008) seems to indicate that in the absence of a relative ethnic homogeneity war is more likely to break than make the states in developing countries (p. 27). One should keep in mind though, that state-building is a long process and the state-building process in Europe often took many centuries before the state managed to impose the monopoly of the legitimate use of force within its borders. Many of these states were, just like some contemporary states in Africa, originally diverse and lacked cohesion. Hence it may well be too early to say that Tilly's aphorism doesn't apply to Africa. In more recent academic literature on state-building in contemporary fragile states there has been a focus on alternative and more non-linear ways of state-building with an understanding that one need to work alongside informal power structures, including actors with decidedly illiberal aims (Allouche & Lind, 2013, p. 18; Menkhaus, 2006).<sup>3</sup>

What most donors see as the tasks of the state are often much wider than enforcement of physical force, and state-building efforts frequently go much

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<sup>3</sup> Contemporary research has also shown that states don't have to have legitimate governing institutions to be effective, which can be argued to go against the Weberian idea of a state. Research on neo-patrimonial states in Asia and Africa has shown that some neo-patrimonial states have indeed managed to produce outcomes that are good not only for the elite, but also for the general population. Research by Fukuyama (2014) on the USA has also shown that the country was built on a patrimonial system. Not all neo-patrimonial systems are effective though, as I will describe in the section on predatory states.

further than just the capacity to control a territory. Fukuyama offers a useful definition of state-building as: *'the creation of new government institutions and the strengthening of existing ones'* (Fukuyama, 2004, p. ix). This also includes the development of new constitutions, the holding of elections, the establishment of an independent judiciary, development of a regulated market economy and the expansion of effective and accountable state institutions across the entire geographic boundaries of a country (Coyne & Pellillo, 2011, pp. 36–37; Englebert & Tull, 2008; IDS, 2010, p. 1). In this thesis I am examining how donors in a broad sense are trying to build effective state-capacity in the health and justice sectors.<sup>4</sup> As a consequence, I have excluded humanitarian aid and aid that by-pass the state by going directly to UN agencies or international and local CSOs as this type of aid are usually not being negotiated with the government.

Despite donors increased engagement with fragile states the effectiveness of aid has nonetheless been rather limited (Zürcher, et al, 2013, p. 570), and as Allouche and Lind have pointed out the international community is lacking tools and guidelines for how to work in messy countries affected by violence and conflict (Allouche & Lind, 2013, p. 18). In order to increase aid effectiveness, the New Deal for Engagement with Fragile States (henceforth called the New Deal) was developed in 2011. The New Deal acknowledges that aid in fragile states has been compromised by a lack of trust and leadership and that donors to a large extent have by-passed national interests and actors (Baranyi & Desrosiers, 2012), with a focus on short-term results instead of medium- to long-term sustainable results that are brought about by building systems and national capacity (OECD, 2011, pp. 2–3). The New Deal builds upon established declarations on aid effectiveness, namely the Paris Declaration (2004) and subsequently the Accra Agenda for Action (2008) and the Busan Aid Effectiveness Declaration (2011), by highlighting the need for country ownership, aid coordination, predictable aid and the importance of transparency (OECD, 2011, pp. 2–3). However, in addition to these "standard" aid effectiveness principles, such as supporting country-led transitions and use of country systems, the New Deal also takes into account the fragility of these countries by adding

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<sup>4</sup> Acknowledging that donors are usually focusing their state-building efforts on building Weberian states, and thereby ignoring other type of state-building, including the necessity of working alongside informal power structures, as I will show in chapter 6 on 'real governance'.

five Peace-building and State-building goals ranging from political settlements to service delivery as seen in the matrix below. It also emphasises country-led transitions out of fragility and the building of mutual trust and strong partnership.

Table 1: The three pillars of the New Deal

<b>The Peace-building and State-building Goals</b>	<b>FOCUS (on new ways of engaging, supporting inclusive, country-led transitions out of fragility)</b>	<b>Building mutual TRUST and strong partnerships.</b>
Legitimate policies (Political settlements and conflict resolution)	Fragility assessment of the causes and features of fragility	Transparency in the use of domestic resources
Security – establish and strengthen people's security	One vision and one plan (which is country-owned)	Risk – that is jointly assessed & managed
Justice – address injustices and increase access to justice	Compact to implement the one vision and one plan	Use of country systems
Economic foundations (generate employment and livelihoods)	Use the PSGs to monitor progress.	Strengthening capacity of local institutions and actors to build peaceful states.
Revenues and Services	Support political dialogue and leadership	Timely and predictable aid

(From: [www.newdeal4peace.org](http://www.newdeal4peace.org))

The New Deal was a major breakthrough with 20 fragile states taking effective leadership of the process (IPI, 2012, p. 10), through the g7+ group ([www.g7plus.org](http://www.g7plus.org)). Congo played an active role in the group through the Minister of Planning and was also one of eight countries that volunteered to pilot the implementation of the New Deal. Tellingly, it was indicative of the lack of trust between the donors and the Congolese government that none of the donors agreed to be co-implementer of the New Deal in Congo unlike in the other pilot countries, such as Afghanistan, Liberia and Somalia.

As highlighted by Carothers and De Gramont, the Paris Declaration and the New Deal assume that recipient governments are 'well-intended' and if donors give them the resources and flexibility to use aid, they will use it to develop their own countries (Carothers & De Gramont, 2013, p. 270). Thus, these international declarations have an idealized vision of the world in which vested interests and neo-patrimonial relationships do not exist. In addition, the Paris Declaration and the New Deal also assume that the interests of donors and recipients are always aligned, which in reality they rarely are (Zürcher, 2012, p. 468). Instead, as noted by Englebert and Tull 'Many African Elites share neither the diagnosis of failure

nor the objectives set out by the foreign promoters of reconstruction policies' (2008 pp. 110–111). A key issue, therefore, is how development projects and programmes are negotiated and implemented in countries such as Congo.

State-building in fragile states is further complicated by the fact that many are what academics usually refer to as 'hybrid' or 'negotiated' states and some, like Congo, also fit into the description of 'predatory' states. I will here go through these concepts and how they affect state-building efforts, as well as what the implications might be on the aid relationship.

### *State-building and ownership in hybrid and predatory states*

Widespread disillusionment with 'failed state' perspectives on African governance has drawn attention to new forms of order emerging on the ground in areas where the presence of the state is weak. The term 'hybrid governance' emerged in reference to these new organisational arrangements that incorporate local institutions and popular organisations which fill gaps in state capacity (Meagher, De Herdt, & Titeca, 2014, p. 1). The idea that there are forms of order beyond the state is nothing new. Hybrid arrangements incorporating non-state institutions into formal governance arrangements have been well documented in Africa since colonial experiences of indirect rule. What is new is the move from state-based ideals of post-colonial order to a more practical emphasis on local non-state arrangements already operating on the ground in fragile areas of Africa (Meagher et al., 2014, p. 1). This signals what has been called a paradigm shift from the 'good governance' orthodoxy to a focus on 'arrangements that work' (Crook & Booth, 2011, p. 97). Instead of fixing failed states, one might 'work with the grain', that is work with the local institutions that are already operating on the ground (Crook & Booth, 2011; Kelsall, 2008, 2011).

In addition to being classified as fragile Congo is also viewed by researchers as a hybrid state, in which the state shares its authority with a number of other non-state actors such as community groups, militias, local 'big men' (they rarely tend to be women), and customary chiefs. These actors sometimes exercise more influence than state officials and are often seen by the population as being more legitimate than the state actors. The state often co-exists together with these non-state structures in a complex system of negotiations with each other which is why

some academics, such as Titeca and de Herdt, chose to call them ‘negotiated’ states (2011). It can also be seen as a kind of co-production where a range of actors ‘co-produce’ services through institutional configuration (Olivier de Sardan, 2011). While some authors accept such hybridity as a practical response to weak states and encourage donors to more actively engage with this reality on the ground (see for example, Boege et al, 2009 p. 16), others critique it for reasons related to legitimacy, transparency and accountability (see for example, Meagher 2012 and Hilhorst et al. 2010). Whatever one’s position on hybrid states, they pose important normative and practical questions for donors as to what kind of state-building to support and who to negotiate with. Should one work with the hybridity or move towards more Weberian organisations? And who, given the strong presence of alternative forms of authority, should one engage with and whose ownership is one trying to cultivate?

Despite the fact that researchers have shown that many of the fragile states in which donors are trying to build state capacity in, are indeed hybrid forms of state, we know relatively little about how donors are dealing with these hybrid forms of governance and how it may affect aid negotiations regarding state-building in fragile states. There is some research such as the work by De Herdt, Titeca and Wagemakers on the education sector in Congo and how the state has tried to reconfigure itself to become more relevant by trying to impose itself on the faith-based organisations (2010 & 2012).<sup>5</sup> Another example is Denney (2013 & 2014),<sup>6</sup> who has explored DFID’s interaction with informal institutions in Sierra Leone. While these studies offer some insights, they also underscore the difficulties donors have grappling with issues of ‘real governance’<sup>7</sup> on the ground, i.e. that services and governance of sectors are being co-produced by a large variety of actors.

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<sup>5</sup> ‘Making investment in education part of the peace dividend in the DRC’ and ‘Make Schools, Not War? Donors’ Rewriting of the Social Contract in the DRC’ (De Herdt, Titeca, & Wagemakers, 2010; De Herdt, Titeca, & Wagemakers, 2012).

<sup>6</sup> ‘Liberal Chiefs of Illiberal Development: The Challenges of Engaging Chiefs in DFID’s Security Sector Reform Programme in Sierra Leone’ and ‘Justice and Security Reform: Development Agencies and Informal Institutions in Sierra Leone’ (Denney, 2013, 2014).

<sup>7</sup> Real governance is a conceptual term used as a conceptual phrase used by Olivier de Sardan and other APPP researchers to encourage people to extend their research beyond formal state rules, particularly in contexts in which a variety of actors, contribute to governance and public services. De Sardan also used the term ‘real’ to contrast such an approach from normative approaches that analyse actual governance practices against a standard of ‘good governance’ characterising Western democracies. In the rest of the thesis I will use the term without inverted commas.

### *Predatory states*

The term fragile states groups together a wide variety of countries. Whereas some fragile states can be seen as developmental in which the elite use the resources of the state for the development of the country,<sup>8</sup> others fit more into the category of predatory states, where the elite use the state for the sole purpose of enriching themselves. Evans defines the predatory state as one that 'preys upon its citizens, terrorizing them, despoiling their common patrimony, and providing little in the way of services in return' (Evans, 1995, p. 45).

Some key features of predatory states include: i) a high degree of political power concentrated in personal rule; ii) the use of power to control economic resources; iii) failure to use such resources for any observable developmental purposes; and iv) the absence of any feasible vision or commitment to promoting long-term and sustainable growth (Bavister-Gould, 2011, pp. 1–2). Predatory rulers, as Reno shows, pursue policies that are antithetical to development as they 'recognise that improving the welfare of citizens could bring a fundamental shift in political power that would threaten their survival', (p. 730). Underlying conditions, usually consisting of valuable natural resources or other rent-seeking opportunities, make staying in power particularly rewarding and in order to stay in power predatory rulers perceive other elite members as a threat to their regime's survival. Under these conditions, as Reno argues, bureaucratic efficiency, property rights and other elements of the rule of law<sup>9</sup> that are usually associated with the provision of public goods to the population are considered as threats to the regime (ibid). As a consequence, predatory rule often leads to the systematic erosion of public institutions and the rule of law and thereby making the state fragile (ibid).

In the worst forms, predation and corruption are the dominating characteristics in all spheres and levels, including the bureaucracy. Diamond uses the term 'predatory societies' to describe a system where every transaction is

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<sup>8</sup> For a discussion about development states, see for ex: 'Developmental Regimes in Africa, initiating and sustaining developmental regimes in Africa' (Overseas Development Institute, 2015). In brief the research finds that neo-patrimonial states can indeed be developmental and hence that it is possible for external actors to work with the state and achieve outcomes that are good for the country at large.

<sup>9</sup> With rule of law I use the definition suggested by Crook et al. in that it refers to the provision of a justice system which sustains the security of all citizens against the exercise of arbitrary power by the state or the powerful, and provides for public regulation of civic disputes in ways which are trusted (Crook, Asante, & Brobbey, 2011)

‘manipulated towards someone’s immediate advantage’ (Diamond, 2008, p. 43-44). I will argue that the Congo fits well with the description of a predatory state, as the regime uses the natural resources of the country for its own benefits, and the government has more or less abandoned social service provision. The regime has also, as I will demonstrate in chapter 3, left the bureaucracy to manage on its own almost totally deprived of resources. Civil servants are hence left to extract resources from the population. How the state and the civil service have transformed under this predatory rule has been well described by amongst others Trefon (Trefon & Smis, 2002; Trefon, 2009, 2011) and Englebert (2002).

Not surprisingly, predatory regimes are a serious threat to state-building. They also pose major challenges for donors who have to choose between the following options:

- 1) By-pass the state and work directly with international organisations and local civil society. This has often been the default choice for donors when they haven't trusted the recipient government. In the long-run, however, this is not a sustainable strategy and it might destroy and further weaken existing structures in the country. In addition, this mode of operation is not in line with international commitments on aid effectiveness and state-building.
- 2) Work with the government in order to build state-capacity. This approach risks legitimizing an illegitimate state, which does not have the support of its people, and donors become complicit in the mismanagement of the country.

Previously donors have chosen to by-pass the state. Although they are still doing this to a certain extent the increased focus on state-building, and the new global norms on ownership in the aid effectiveness declarations, have made this option less feasible.

### 1.3. Research aim, purpose and rationale

This thesis aims to contribute to our understandings of how development assistance for state-building is negotiated in hybrid and predatory states through researching one such case: The Democratic Republic of Congo.

As mentioned in the introduction the relationship between the donors and the government is rather hostile and the donors seem to lack control and power in the aid negotiations, but despite repeated reform failures and the government's tough stance with the donors, Congo has managed to secure a constant flow of mainly unconditional aid. As noted earlier, there are some major contextual factors as to why Congo matters for Western donors and why they persist in providing development assistance to the country. Within this particular context I research how the donors try to secure as much as they can of their state-building agenda goals, focusing on negotiations in two different sectors, the health and the justice sectors, and how the government has reacted to it.

I review the aid negotiations to investigate how donors and the government engaged with each other, and by unpacking their history of engagement – how they reacted and counteracted with each other iteratively over time. Aid negotiations is a highly relevant prism through which to analyse the relationship, as aid is the main channel through which the international community engages with Congo. Through an in-depth analysis of how the donors and the government engage with each other in aid negotiations, I address how the negotiations are being conducted in the two sectors, by looking at both structural factors influencing the negotiations and actual strategies employed by the different parties.

Considering the frequency of aid negotiations, as Spector and Wagner have pointed out, there is a surprisingly limited body of literature that is specifically devoted to these kind of negotiations (Spector & Wagner, 2010, pp. 327 & 338).<sup>10</sup> The recent literature on aid negotiations that exists focuses mainly on how

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<sup>10</sup> Within the literature on international relations there have been some important studies on North-South negotiations most notably by William Zartman (1987; 1985). However, these studies focus on multilateral negotiations, such as international trade negotiations and don't investigate aid negotiations. Negotiations with only two parties differ considerably from multiparty conferences. Also, as I will highlight at p. 15 aid negotiations differs from other kind of asymmetric north – south negotiations, in that they are often informal without a clear beginning or end. They are often not a one-off event, but rather a form of on-going negotiations between the donors and the recipients over the implementation of aid (Whitfield & Fraser, 2009, Zürcher et al, 2013, Spector & Wagner, 2010). Other academics, such as Barry O'Neill (2018) has looked at international negotiations from a game theory perspective and rational choice models. Game-theory builds on the study of mathematical models of strategic interactions between rational decision-makers. It views the players as rational actors rather than as political agents that are partially constituted by ideas and memories of the community from which they emerge. Negotiations are, however, not just strategic games based on the choices of rational agents. The interests and preferences of the actors are instead shaped and influenced by the global economic, political and ideological contexts in which actors are situated and the negotiations themselves are embedded. As a consequence, I have chosen to not use game-theory as my conceptual approach to contemporary aid negotiations.



countries considered to be so-called ‘aid darlings’ have pro-actively used strategies to successfully create a bargaining space to elaborate their own policies. However, as De Haan and Warmerdam have pointed out much less research has been carried out on predatory states and in particular how donors have engaged with the government elite and how aid has been negotiated (De Haan & Warmerdam, 2012, p. 22). Scant attention has also been paid to how national actors experience and navigate the involvement from the international community (Baaz & Stern, 2013; Whitfield & Fraser, 2009a).

Considering the focus on the New Deal, and the increased attention to fragile states it is timely to explore aid negotiations and engagement strategies in situations of hybridity and predation. International aid to fragile and conflict-affected states has risen during the last decade (IPI, 2012, p. 1). The British government has, for example, declared in its 2015 aid strategy that 50% of its foreign development assistance would be targeted to fragile states and regions (DFID, 2015, p. 4).<sup>11</sup> Multilateral organisations are also increasing their work in fragile states. For example, in the agreement for a capital increase for the World Bank in 2018, it was agreed to double financial support for countries facing current or rising risks of fragility (World Bank, 2017, p. 51). Congo is not the only country amongst them to display the characteristics of a predatory and hybrid state.

This research is guided by one main question, and two sub-questions:

What explains the strategies the Western donors use when engaging with the hybrid and predatory Congolese state to advance their state-building agenda and how does the Congolese government respond?

- a. What strategies are the donors using to create incentives amongst the ruling elite to implement their state-building policies and programmes in the health and justice sectors, and what strategies does the government use to secure their autonomy and to secure the influx of aid?

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<sup>11</sup> DFID’s latest Aid Strategy: UK Aid - tackling global challenges in the national interest’ (2015).

- b. What explains the different strategies that the Western donors are using in the two sectors and how the Congolese side has reacted to it?

To answer these questions, I will explore how structural factors that surround the negotiations, such as political and economic factors and international norms, influence the negotiations and the strategies that the different parties can use to advance their agendas. I will review in-depth the negotiation strategies of both the donors and the Congolese government, and how the fact that Congo is a hybrid state affects the donors and the Congolese government. To what degree, for example, do the donors involve domestic non-state actors such as faith-based organisations, customary chiefs and community-based organisations in their negotiations? Considering that the Congolese government is perceived as predatory, one might expect that the donors are actively looking for other domestic actors that they could work with in their state-building efforts. One might also expect that the government, that has been forced to share its authority with a number of non-state actors, might be unwilling to involve them in the negotiation process, as they might be seen as competing foci of loyalty and political and economic organisations whose existence might be seen as a challenge to state control. I will explore if this was indeed the case and if there are any differences between the health and the justice sectors.

### *Significance of the study*

Much of the newer literature on aid negotiations focuses on developmental states. Far less research has been carried out on aid negotiations in predatory and hybrid states like Congo. I will explore how, within the various structural factors that surround the negotiations, different actors have tried to influence these factors to their advantage, and what strategies the donors and the government have used to reach their objectives. I will assess whether this differs from aid negotiations in other type of countries explored in research by for example Whitfield and Fraser (2009), Fisher (2013, 2014, 2015), Elgström (1993) and Beswick (2007, 2013). Considering that increasing levels of aid are being provided to fragile states, it is timely to investigate the negotiations between the donors and the government in these kinds of contexts.

My research complements studies on the education sector (De Herdt, Titeca and Wagemakers 2012), administrative reforms (Moshonas, 2012) and Trefon's book about aid inefficiency and state reforms in the DRC (2011). It does this by taking a more in-depth look into how the actors have engaged and negotiated with each other and how the aid effectiveness agenda has influenced the negotiation process. By doing an in-depth review and grounded analysis of how negotiation strategies differ from one sector to another, this thesis will demonstrate how the negotiations and engagement strategies vary significantly between sectors – a distinction that is mainly lacking in other studies.

Finally, this thesis also contributes to the literature on hybrid states. Although the literature on hybridity, especially in fragile states, has grown rather rapidly recently, we still know relatively little about how hybrid governance works in Congo. There is some literature on hybridity in Congo, for example, the aforementioned study of the education sector (see also De Herdt and Titeca 2011 and 2016) and some studies on the customary justice system (see for example Shearon, 2017; Verweijen, 2016; Vlassenroot, 2012). We know less about real governance in the health sector and the linkages between the formal justice system and the customary system. In particular we know little about how the hybridity affects the negotiations on state-building between donors and the government, and whom they engage with in the aid negotiation process.

#### 1.4. Some considerations on terminology

This thesis uses a number of terms that are potentially contentious. Below I explain the choices that I have made in this regard.

The use of the term 'the donors' is, as Whitfield and Fraser (2009) remark, a convenient and almost unavoidable term for writing about donor – government relations at a general level, but it can arguably also be rather imprecise because it portrays donors as a homogeneous and unified group. While it is definitely true that donor motivations for giving development assistance vary, as noted by Lancaster (2007), they broadly follow the same policy guidelines issued by the OECD Development Assistant Committee (DAC). This plays an important role in homogenising donor discourse and actions (Lancaster, 2007; Whitfield & Fraser, 2009a, p. 18). Besides the normative influence of the OECD-DAC, there are a

number of other factors that tends to contribute to a harmonized view amongst the donors. Autesserre (2014) argues that there are numerous formal and informal mechanisms that help spread and reinforce ways that donors interpret and act, for example, through the rotation of staff members between the different agencies and organisations and also through personal and professional gatherings of expatriates. These gatherings range from formalised settings such as various coordination groups to informal settings, such as after-work drinks with colleagues. Through these various interactions donors share information and narratives and it allows newcomers to learn from those that have been in the country for a longer time (Autesserre, 2014, pp. 34–39).

Rather than ‘development partners’ or ‘partner countries’ which is the terminology promoted by the new aid architecture in an effort to give the impression that development is a partnership between two equal partners that are working towards a common goal, I use the terms ‘(aid) recipient’ and ‘donors’. I concur with Collins who remarks that these labels make more sense as they reflect ‘the real dichotomy despite the partnership rhetoric’ (Collins, 2011, p. 4). In the context of this research, they are also important to providing clarity in the argument.

Finally, regarding the term ‘aid negotiations’, such discussions are, by their very nature, usually seen as asymmetrical with one party in need of the assistance and the other party having control over funds (Spector & Wagner, 2010, p. 327). Hence, it has often been taken for granted that developing countries can do nothing but comply with the demands made by the donors (ibid p. 327-328). In this thesis, I will seek to demonstrate that this is not always the case. In contrast to many other types of negotiations, aid negotiations are usually quite informal: they are not a one-off event, but rather a form of on-going dialogue between the donors and the recipient over the implementation of aid (Whitfield, 2009, Spector & Wagner, 2010, Zürcher et al, 2013). The informal characteristic of aid negotiations makes them rather harder to trace with discussions between the parties not always documented, and therefore making interviews with key participants in the negotiation a necessary research tool.

## 1.5. Research design and methodology

### *Research design*

The research methodology was designed to address limitations that were identified in previous literature on aid negotiations. Hence, taking Congo as my case study, I traced the negotiations between the donors and the government at three different levels: national, provincial and district in order to assess whether the power balance between the parties at an overall level was reproduced at the sector and local levels.

In the first phase of my field research I analyzed the overall relationship between the donors and the government by interviewing donor representatives, government officials and other observers, such as academics, independent consultants and CSO representatives, taking account of the climate in which the negotiations were taking place.

In the second phase, I tracked how these overall relations translated to the sector level by looking at two illustrative comparative case studies; namely the justice and health sectors. The health sector is, to a large extent, financed by the donors (an estimated 40% of the health costs are covered by the donors). The justice sector has been identified by a number of donors as key to promoting the rule of law, combating impunity, and promoting democracy and economic growth. Both sectors are identified as important for state-building in the Peace and Stability Goals of the New Deal, with one providing social services to the population and the other addressing injustices and increasing access to justice. To use the terminology of Fritz and Menocal, one (justice) is in the 'constitutional domain' of state-building that is concerned with security and rule of law and the other one (health) is a so-called non-constitutive domain in which we find social-service delivery (Fritz & Menocal, 2007, p. 26). I also selected these sectors in the expectation that they would likely differ in a number of aspects and thereby be more interesting to compare. The aspects that I looked at were:

- a) How sensitive the issue was likely to be for the government, with the expectation that justice reforms would be more sensitive for national

sovereignty which would likely lead to differences in engagement strategies;

- b) The way that the sectors reflected a hybrid nature in delivery of services to the population, with the health sector having more engagement from NGOs and faith-based organisations, whilst the justice sector is dominated by traditional authorities alongside state institutions.

By choosing two sectors that were likely to differ in a number of aspects, I aimed to identify possible differences in aid negotiations.

Finally, as a third phase, I chose one programme of particular importance in each of the sectors that I then analyzed down to the district level.

In the health sector I analyzed DFID's and Sida's Access to Primary Health Care Programme (ASSP). The reason for choosing this programme was: i) with a budget of £572 million it is the largest bilaterally-funded health programme in the country; ii) it has two aims: (a) to improve access to health care and (b) to strengthen the national health system, hence it has a clear state-building objective; and iii) it has a clear focus on working with the faith-based organisations in addition to the state.

In the justice sector, I reviewed two inter-related programmes. One of the Programmes was called PARJ (Programme d'Appui à la Reforme de la Justice) which aimed to address justice reforms at the central level. This programme was financed by the EU and Sweden. The other programme was called Uhaki Safi which aimed to address justice reforms in the Eastern Congo and was financed by the EU, Sweden and Belgium. These two programmes were the largest reform programmes in the sector and both had clear state-building objectives. However, both also intended to work with customary chiefs, and hence to some extent embraced the hybridity of the justice sector.

### *Research methods*

I used qualitative methods of data collection, mainly in the form of semi-structured interviews in order to understand, explain and clarify different actors' views, attitudes and perceptions. Qualitative methods lend themselves to studies of attitudes and perceptions of actors in a way that quantitative methods are unable

to capture (Silverman, 1997, p. 12). The interviews were complemented by observations during ten months of fieldwork spread out over three years: November – December 2014, February – July 2015 and November – December 2016. Interviews were used as a core source of information for two interconnected purposes: firstly, as a means to gather first-hand information on the wider environment of aid politics in Congo, and secondly, to shed light upon the process involved in the two focal sectors and programmes. To complement the interviews, I also drew from a number of secondary sources, such as policy papers, minutes from meetings, and programme documents from donors, CSOs and the Congolese government. I also followed analysis in national newspapers such as '*Le Potentiel*', '*L'Avenir*' and '*Phare*',<sup>12</sup> and international newspapers and journals, such as the *New York Times*, *Jeune Afrique* and *The Economist*, to supplement my understanding of the donor – government relationship in the country.

I used both sets of information to reconstitute the aid negotiation process at an overall level as well as the negotiation processes in the health and the justice sector. Each of these tools to collect information, and the way in which they were used, are discussed below.

### *Interviewing*

Whilst in Congo I interviewed 117 people in total, 46 from the donor community (including national staff), 15 from CSOs, 18 from implementing agencies, 25 Congolese Civil servants and 13 others, which includes people from Academia and independent consultants and experts. These categories are somewhat blurred as I found that, for example, some people that had previously been working with the government were now working for donor or implementing agencies. The interviews were on average 1.5 hours long and I met many of the interviewees on several occasions in order to build a rapport with them and to triangulate data from other interviewees. I spent most of my time in Kinshasa where the donors, ministries and many of the headquarters of CSOs are located. In addition, I also visited the province of Kasai-Occidental for a week together

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<sup>12</sup> *Le Potentiel* is owned by a Member of Parliament that belongs to President Kabila's party, but it is generally seen as being rather critical towards the government. *Phare* is affiliated with UDPS and *L'Avenir* is pro-government. They all have very limited circulation, ranging between 2 500 – 3 000 copies per day (Rift Valley Institute, 2016, p. 85).

with IMA, the implementing agency of the ASSP programme, where I met with provincial and district level authorities in the health sector as well as with staff in health centers.<sup>13</sup> I also spent ten days in Goma in North Kivu (eastern Congo) with the Uhaki Safi programme, where I met people working for the provincial justice administration, CSOs and the implementers of the programme.

When I started my research, it was my intention to spend a substantial amount of my time at the provincial and district level to review how the relationship played out at these levels. However, considering that i) my main focus has been on the donors and their relationship with the Government and ii) that most of the donors do not have any presence at the provincial and district level, but instead are dealing with these levels through their aid contractors, I chose to spend most of my time in Kinshasa. To research the full extent of the relationship between the contractors and the local administration would require a thesis on its own. However, as explained above I did make shorter field-trips to interview people engaged in aid programmes at the provincial and district level, and I review the outcome of these meetings in chapter 5.

I interviewed most of the people while on my own, but a research assistant, Mr. Delphin Mbaya, accompanied me on the field-visit to Kasaï-Occidentale and to a few interviews with government officials and faith-based organisations in Kinshasa. I knew Delphin Mbaya from previous encounters, having met him in his role as a translator for various embassies. His in-depth knowledge of Congolese politics made him a valuable discussion partner throughout my research. My interviews with Congolese respondents were carried out in French, whereas the interviews with the donors, INGOs and external experts, were carried out either in French or English depending on the language the interviewee felt most comfortable with. Some were carried out in Swedish, which is my native language. In a few cases the interviewee responded in one of the other Nordic languages. French is widely spoken in Congo, and considering that I was conducting interviews with the elites, I never had to use an interpreter. In a few cases, when I attended focus group discussions arranged by ASSP in former

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<sup>13</sup> Meeting authorities and health staff together with the implementing agency might affect the responses. To counter-balance this I met with a number of people alone afterwards to allow them to more freely express their views.



Kasaï-Occidentale, my research assistant, who is from that region and can speak the local language, Tshiluba, translated for me.

The semi-structured interviews provided a useful data gathering method because of its flexibility, allowing me to ask planned questions whilst also elaborating the unexpected, interesting themes that arose during the discussions. It also made it possible to tailor the interviews to the role that the person played in the negotiations between the different actors. In many ways my research was following what Flick terms 'the principle of case reconstruction' (Flick, 2014, p. 136) and was inspired by process tracing, a method which is suitable for where the researcher systematically seeks to 'reconstruct an event or set of events' (Tansey, 2007, p. 766).<sup>14</sup>

Many of the interviews I conducted could be described as elite-interviews, in which the interviewee is considered as an expert in the area. It is commonly perceived that it is more difficult to gain access to the elite than it is to people who are regarded as being less powerful (Burnham, 2008, p. 208; Sabot, 1999, p. 329). This is based on the assumption that powerful people will have limited time to take part in interviews and need to be given some very convincing motivation for seeing a researcher (Burnham, 2008, p. 208). It is also assumed that elites have more possibilities of actively preventing access by, for example, making use of gate-keepers such as guards and secretaries (Smith, 2006, p. 115). In contrast, I found getting in touch with the key respondents from the Congolese government departments, independent experts and Western donor organisations to be a fairly straightforward process. When I started my research I already knew some of the people I wanted to interview, which facilitated access. Using snow-balling, a method where the researcher continuously asks respondents to refer her or him to other suitable respondents, was also a useful sampling technique for gaining access to relevant people (Burnham et al, 2008 p. 208).

One group that I, however, did not manage to get access to was politicians in the donor countries and Congolese politicians. While politicians in donor countries, such as the Minister of Development, set the broad guidelines for which countries will receive aid and whether budget support should be given etc., they are not

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<sup>14</sup> Process tracing has also been defined differently, see for example: (Checkel, 2006) and (Collier, 2011).

involved in the negotiations of aid at the country level. Interviews with donor officials thus provided the 'donor perspective'. Congolese politicians would have been interesting/more relevant to interview, as they are to some extent involved in the negotiations with the donors. I interviewed advisors to the Minister of Health and the Minister of Justice but did not managed to secure a one-to-one interview with the Ministers themselves, despite efforts to approach them through their advisers. I didn't get a feeling that there was any hostility against meeting me as a researcher, but rather that they didn't prioritized it. Interviews with their advisors and staff members thus provide the 'government perspective'.

Some researchers have highlighted that elite interviews can be flawed, and that although they are good in revealing attitudes and perceptions, there might be questions regarding their representativeness. People might want to be seen in a favourable light, and their memories might have faded. This is why triangulation of data is so important. I have weighted the information I have received from interviewees with the accounts of other people involved in the negotiations and, to the extent possible, information that was documented in minutes or other documentation of the negotiations such as mid-term reports and evaluations. The negotiations in my chosen sectors had been undertaken relatively recently before the start of my fieldwork, and some of the work was still on-going. Hence many of the people that had been involved in the negotiations were still in the same positions, and had recent memories of the engagement with each other. I also conducted a few interviews with people who had recently left their work in Congo in order to get a longer-term perspective on the engagement in a particular sector.

In this thesis, I am frequently quoting what interviewees have told me. Some of these quotes are used to reinforce some of the general observations or give a flavour of how actors understood the situation, whereas others provide more key elements of empirical information on how the negotiations were conducted, and how the outcomes were perceived by the different actors.

From the outset of the research, I decided not to record my interviews. This was part of an ambition to make the respondents feel at ease because the more formal the interview setting, the less likely the respondent is to feel comfortable enough

to discuss the issues at hand (Leech, 2002, p. 665). Instead, I recorded the interviews in extensive notes, together with my own thoughts about the interview.

I also had a large number of informal conversations with relevant stakeholders such as independent experts with decades of experience of working in Congo, Congolese academics and donor representatives whom I often met in informal settings such as dinners and cultural events. These informal encounters provided useful background information and possibilities to get feedback on my preliminary findings.

The research went through the Sussex University's ethical approval process. I made informants aware of the purpose of the interviews and gained their verbal approval for using the information they provided to me. Confidentiality was guaranteed and, in writing this thesis, direct quotations have been anonymised through use of the descriptors such as 'government representative', 'donor representative' or 'INGO/CSO representative'. Where relevant, I have included more information on respondents, for example, the ministry they were affiliated with or whether the donor representative was the head of an agency or a sector expert, but I have ensured that the number of interviewees fitting this category corresponded to more than one person in order to maintain anonymity.

### *Observations*

In addition to the interviews, I also had the opportunity to participate in meetings between donors and government officials. For example, whilst visiting North Kivu, I attended a high-level programme review meeting between the Minister of Justice, key stakeholders in the province and the main donors to the Uhaki Safi programme. I also had the opportunity to attend the largest policy meeting of the justice sector in a decade (the so-called *Etats-Généraux*), which was led by the Ministry of Justice and opened by President Kabila. In the health sector, I attended two review meetings (one annual and one quarterly) of the ASSP programme in which the donors and the implementers met with government officials from the central, provincial and district levels to discuss achievements and challenges. During my visits in the provinces, I also had the opportunity to observe the interactions between the implementing agencies and their counterparts at the provincial and district level. In addition to providing much

useful background material to my research, the attendance at these meetings provided me with opportunities to informally discuss with participants and also to set up meetings for formal interviews. I am deliberately avoiding the term participatory observations as my role in these meetings was strictly as an observer. In the meetings I introduced myself as a PhD researcher.

### *Secondary sources*

To supplement the interview data, and to help check its validity, I utilised a large amount of information from secondary sources. A lot of the material has been in the form of 'grey literature' in the sense that it is not publicly available. These materials include project documents, minutes, travel reports, evaluations and studies conducted by donors and INGOs. All in all, I have reviewed over 100 documents related to the sampled programmes which provide an invaluable source to triangulate information from interviews. Moreover, reading the documents also informed the questions I asked during the semi-structured interviews. I also benefited from access to publications by International NGOs, such as *Global Witness*, *Human Rights Watch*, *International Crisis Group* and the *Congolese Research Group* based at New York University. They provide useful insights into the politics of Congo and the relationship between the government and the donors.

### *Reflections on positionality and reflexivity*

During 2011-2013, I worked as the deputy head/lead analyst at the development section of the Swedish Embassy in Kinshasa and was also the acting head for nine months. I also worked there again for a brief period between July-October 2016 as a temporary staff member, dealing with peace and security related issues.<sup>15</sup>

Before going to the field, I had thought that my previous role might sometimes be an advantage, but in some situations it might also be a disadvantage. I was concerned that government officials and some CSO representatives might recall my previous role and as a consequence be more cautious about criticizing donors

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<sup>15</sup> For discussions on the importance of positionality and reflexivity see for ex. Saukko and Etherington (Etherington, 2004; Saukko, 2003).

in front of me. Hence, I intended to downplay my previous connection with the donor community as much as possible.<sup>16</sup> In reality, I soon realised that my attempts were rather pointless as even though Congo is a large country, the donor community is relatively small, and donors are working with more or less the same people in the different ministries. So despite my efforts, many interviewees knew of my previous role. It is of course impossible to fully know to what extent it affected the respondents, but I was surprised by how outspoken civil servants and implementing partners were regarding the donor community. I got the impression they wanted to convey their reality to me and sometimes send a message back to the donor community. This is apparently not unusual. Rosalind Eyben, Emeritus Fellow at IDS, who has extensive experience of working in the donor community before entering academia, advised me of similar experience in conducting her research.

Some of the people within the government were high-level civil servants whilst others were mid-level officials. This could possibly affect the power-balance, between me as a researcher and them as interviewees. However, I did not notice much difference in the reactions regardless of the individual's seniority, other than some of the more high-level ones who were a bit more time-constrained.

Amongst the donors, I was often seen as an insider, someone to whom they could talk to who would understand them. It is difficult to know what people would have said if I were not considered as an insider, but I expect that some would have been more cautious in their responses. My insider position and experience of having participated in the donor coordination group with some of them also gave me an access to Heads of Cooperation that I believe would have been difficult to access without my insider position.

Working for donor agencies has given me an in-depth understanding of the international aid system and how it operates at the country level. I thus have an understanding of the system, I have seen its weaknesses from the inside and understand the constraints within which it operates. In order to ensure that I maintain a critical point of view, throughout the research I sought to challenge

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<sup>16</sup> This by stressing that I have currently left the 'aid industry' and that my research was in no way sponsored, or would be used, by any donor.

any potential biases in my thinking by discussing the issue with my supervisors and fellow PhD researchers and have been conscious of how it might affect my interpretations and made adjustments accordingly.

I have also been reflecting upon whether my views on the Congolese government may have affected my interviews. Although I am critical towards the government's approach of not arranging elections and that they are not providing for their population, this critical viewpoint is directed more towards the highest levels of the government, such as the President and people within the military and not towards the civil servants who are, in most cases, just trying to do the best within a dire situation. I was very careful about avoiding negative comment about the government within the interviews, although some of the respondents did raise critical viewpoints both towards the donors and towards the government.

### *Research setting*

Finally, a short note on conducting research in Congo. Although the conflict mainly affects the eastern part of Congo, it is not an easy country in which to conduct fieldwork. Corruption is rampant and people in authority frequently seek to extract financial resources, often in quite intimidating ways. Just to mention one example that happened to me the last weekend during my fieldwork: I was visiting a local market an hour outside central Kinshasa together with some Congolese friends. Foreigners are a rare sight at the market, and when we were about to leave we were surrounded by a group of people who claimed we had illegally taken photos at the market place. Until 2010 it was illegal to take photos in public spaces, and although it is now legal, people are still using the old law to extract money. My friends asked for IDs, as those who stopped us claimed to be from the police. However, only one of them could produce some sort of an ID. It was clear they wanted money. More and more people were coming and they were getting increasingly aggressive. We were moved to some plastic chairs outside a hut, where we were 'detained'. It took my Congolese friends two hours, and a number of phone calls to various friends in Kinshasa, to get us 'released' without having to pay any money. These groups of people did not have an official position in the Congolese state system but took the chance to extract some money in a highly informal way. With the real police it would probably have proven

even more difficult to negotiate the way out despite the fact that we had done nothing wrong.

Another challenge with doing research in Congo is the limited infrastructure, which makes it difficult to get around. Congo is four times bigger than France, but has fewer roads than Luxembourg. Air travel is to a large extent limited to UN flights, which are hard to get onto for people outside the 'aid circle'. The immigration police, in addition to controlling movements in and out of Congo, are also closely following the domestic movements of foreigners and sometimes try to exact money from travelers. I was grateful to both Congolese and international staff members who helped me with arranging necessary travel documents and vouching for me while being interrogated about my whereabouts.

Safety is an issue, although interestingly enough, it was in one sense easier to carry out research in Goma in the conflict-affected province of North Kivu than in Kananga, which at the time of my research was a quiet part in the centre of Congo. This was because the infrastructure in the form of taxis, hotels etc. are more easily available in the conflict affected provinces where there are a large number of international staff.<sup>17</sup> However, security constraints make moving outside Goma, the provincial capital extremely difficult. Illustrative of the volatile situation in Congo, the Kasai-Occidentale province became one of the major conflict zones in the country only a year after I had finalized my research in the province. The province was then a sleepy and almost forgotten part of Congo. However, militia attacks and army reprisals have subsequently uprooted more than 1.4 million people in this previously stable region and according to the Catholic Church over 3,000 people have been killed (Reuters, 20 June 2017).

### 1.6. Caveat of the study

A challenge has been that my research subject, the aid relationship, is a continuous and unfolding policy process. Since I completed my fieldwork in Congo in November 2016 the relationship between the donors and the government has partly changed. This is due to the fact that the presidential and

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<sup>17</sup> Please note that I am here only referring to the situation in the provincial capitals: Goma and Kananga. Outside Goma the security situation is dire as is the quality of infrastructure.

Parliamentary elections were scheduled to be held in December 2016 had yet to take place at the time of this writing. The violence that the government has used against people demonstrating for democracy has made things more difficult. As a consequence, Belgium decided in the beginning of 2018 to redirect part of its aid from the Congolese government to INGOs. The Congolese government has retaliated by closing down the so-called 'Maison Schengen', the Belgium office for handling Visas, which they operated on behalf of the EU. Other donors have not so far followed Belgium's actions, although both the EU and the USA have issued sanctions against individuals within the regime considered to be behind election-related violence and human rights abuses. My research covers mainly the period from the country's first elections since independence in 2006 until the end of 2016, although I will make references to more recent events where relevant. I have added an epilogue in the end of the thesis to provide an account of the recent events in this turbulent aid relationship. The epilogue covers events until September 2018, with a footnote that contains a brief summary of key events until September 2019.

### 1.7. Structure of the thesis

The following provides a detailed outline of the conceptual and analytical frameworks used for the empirical analyses in the thesis. In chapter 2, I outline what earlier literature on aid negotiation said about the influence of structure versus agency on the aid negotiating process. I also review the structural factors and conditions that surround the negotiations and how they might influence outcomes. I identify the different strategies the donors and recipient governments use to control the outcome of the negotiations. Finally, I identify some gaps in the previous literature and suggest a conceptual framework for analysing aid negotiations.

Chapter 3 provides a historical and contemporary overview of the state-building process and aid relationships in Congo. The historical context is important to situate and understand the constraints that shape the agency of Congolese actors in the contemporary period. Many of the constraints of the Congolese state, such as extroverted patterns of wealth accumulation, administrative malpractice and non-accountability of the government, go back to colonial times



and the 32-year rule of Mobutu. An historical approach is even more relevant considering the foreign influence in the country's recent history, from its creation as a state under King Leopold of Belgium, to the decolonization crisis of the 1960s and up to the present. I also provide an overview of contemporary aid to Congo, with a particular focus on the health and the justice sector.

In chapter 4, I provide a review of the overall contemporary aid relationship between the donors and the government, focusing on perceptions of self and the other and how this is affecting the relationship. I provide an account of the different strategies that the donors and the government have used in their engagement with each other.

Having set the scene both contextually and historically, chapter 5 then provides case studies in the health and justice sectors. I examine how perceptions, organizational factors and norms have influenced the negotiations and what strategies the donors and the government use. I also review how the level of discussion (national, provincial or district) affects the negotiations.

Chapter 6 provides a detailed account on hybridity and real governance in the health and justice sectors. A brief history of the development of hybridity in the two sectors is provided, including how the government and the donors are interacting with the non-state actors. I will also review why the donors find it difficult to engage with non-state actors.

Chapter 7 provides findings and conclusions to the research questions outlined in this introduction. It also, highlights some future potential areas of research, and policy recommendations for the donors.

## Chapter 2: Conceptual Framework

### 2.1. Introduction

This chapter describes the conceptual framework that informs this thesis. It is focused on a set of debates that coalesce around the engagement between donors and aid recipient governments including how they engage with other actors involved in state-building efforts such as FBOs and customary chiefs that form part of the hybrid character of the Congolese state. It contributes to recent research that highlights that there is a need to rethink earlier assumptions about aid negotiations that have traditionally been cast in terms of donor power and African dependency, in which donors hold the ultimate power and the aid recipient government does not have the agency to say no or resist the donors.

Unsurprisingly, research in recent years has shown that this is not always the case. The supposedly strong are not always strong, and the assumedly weak are not always weak. African states are not mere passive recipients of aid, but active agents in seeking to increase their influence over the outcomes in the negotiations. Whitfield and Fraser (2009), for example, in an extensive study on eight African states and aid negotiations, show that some African governments have managed to gain control over aid in their engagement with the donors, highlighting specifically Botswana, Ethiopia and Rwanda as cases in point. They argue that these countries have managed to effectively steer the situation to increase their control over the outcomes of aid negotiations. Building upon the work of Whitfield and Fraser, other researchers such as Fisher (2015, 2017) and Beswick (2007, 2013), have focused on aid negotiations in countries that have been described as ‘donor darlings’, like Rwanda and Uganda. They found that these countries, despite a strong dependency on aid, have successfully used strategies of ‘image management’ to carve out a substantial space for policy manoeuvre.

Less research has been carried out on aid negotiations in fragile states, such as Congo that is regularly ranked amongst the world’s most fragile states. For example, on the Fund for Peace’s state fragility index for 2018, Congo is one of six countries that are placed in the very high alert category together with countries like Yemen, South Sudan and the Central African Republic. In comparison,

Rwanda is ranked no. 34 and Uganda no. 24 ([www.fundforpeace/fsi/](http://www.fundforpeace/fsi/)). As one might expect, fragile states have less capability to successfully manage and create positive images in the same way as the aforementioned countries have been able to do. In addition, the more fragile states usually don't have strong macro-economic management, nor strong state institutions or comprehensive national development visions, which are all factors that Whitfield and Fraser identify as critical points for a recipient government to secure a favourable deal. On the other hand, and possibly somewhat counter-intuitively, a country's fragility might also be something that a recipient country can try to capitalize on as an asset in its relationship with the donors (Fisher, 2014; Zürcher, 2012).

The structure of this chapter is as follows: Section 2.2 details what the existing aid negotiation literature has said about the structure and agency debate, followed by an account of structural conditions and factors and what influence they might have on aid negotiations. Section 2.3 describes the negotiation strategies that donors and recipient governments use to get what they want through their engagement with each other. Section 2.4 analyses how negotiations might differ depending on which sector and at which level the negotiations are taking place. Section 2.5 provides an account of real governance and hybridity and how this might affect negotiations over state-building. The chapter concludes with an account of the gaps in the literature, and the framework for analysing aid negotiations in fragile and hybrid states.

## 2.2. The context of engagement and structural factors

### *Structures versus agency*

In the social sciences there is a long-standing debate over the primacy of structure or agency in shaping human behavior.<sup>18</sup> Within the broader literature on international relations there has been a tendency, as noted by Brown and Harman, to overemphasise structural causes over agency (Brown, 2012 p. 1890; see also Brown & Harman, 2013). In addition, due to the fact that many countries in sub-Saharan Africa were more or less financially dependent on external aid

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<sup>18</sup> 'Structure' is the recurrent patterned arrangements which influence or limit the choices and opportunities available. 'Agency' is the capacity of individuals to act independently and to make their own free choices.

after independence (Bayart, et al, 1999, p. 4), there has been a tendency in the aid literature to over-emphasise the dominance of international donors and to under-emphasise African agency and room to manoeuvre (Brown, 2012, pp. 1896&1900; Whitfield, 2009; Beswick, 2007, p. 17).

Zartman has, for example, described north-south negotiations as ‘archetypical cases of power asymmetry’ (Zartman, 1985, p. 121). During the Cold War there was some recognition that African countries could have some leverage in the relationship, by either siding with the bloc of Soviet Union or the Western World, dominated by the United States. Clapham (1996), for example, whilst acknowledging this particular leverage, still argues that it was the superpowers of the Cold War that were the important side of the relationship, noting that ‘to claim that so large a dog as the United States or the Soviet Union could be wagged by so small a tail as their African ‘partners’ appeared to stretch plausibility beyond any acceptable limit’ (Clapham, 1996, p. 134). After the end of the Cold War there was a general assumption that African regimes lost the autonomy that they had in the bi-polar era (Fraser, 2009, pp. 64–65; Plank, 1993, p. 414).

It is important to point out that these descriptions have been challenged, including most notably by Bayart in his work on: *‘The State in Africa: the Politics of the Belly’* (1993) and *‘Africa in the World, a History of Extraversion’* (2000). Bayart claims that despite the collapse of bi-polarity, African regimes have not been reduced to a purely submissive role in aid relationships. Instead he argues, they continue to seek to manipulate and manage relations with donors to their advantage (Bayart, 2000). I will return to Bayart’s arguments later in this chapter, in reviewing the negotiation strategies being used.

Another author that challenged the view of African dependency is Chabal who argues that African regimes *‘though they could no longer use the Cold War rivalry to extract aid, they could make it clear that the growing poverty of their countries was perilous’* (Chabal, 2002, p. 458); thereby highlighting other sources of leverage available for recipient countries. Indeed, African governments continue to construct images of threats and dependency, and highlight the risk their instability poses to the outside world (Fisher, 2014; Zürcher, 2012). Dependency

and weakness is, however, not the only source of leverage available to recipient countries.

What is important in this discussion on structural factors and agency is that alone neither is sufficient to analyse in order to understand international negotiations. As Wight accurately points out, we need to think of agency “as always structurally embedded yet distinct from those structures that enable and constrain” and that ‘agents always bring their structures with them’ (Brown, 2012 p. 1895). Autesserre (2014) uses a similar definition in her book *‘Peaceland – Conflict Resolution and Everyday Politics of International Interventions’* in which she stresses that ‘agents and structures are mutually constructive, in the sense that they shape each other’ (Autesserre, 2014, p. 40). The structures set certain limits, but through their practices, individuals are able to use their agency by creating, maintaining or even altering the dominant structures by using different strategies (ibid). Hence, in order to analyse the power between the parties we need, unsurprisingly, to analyse the interplay between structural factors as well as how donors and recipient governments use their agency to use or alter structures to their benefit.

Whitfield and Fraser use the term ‘structural conditions’ to refer to the structural factors that surround the negotiations and which provide the economic, political and institutional context within which donor and recipient define their preferences and select their strategies (Whitfield & Fraser, 2009b, p. 39). Just as other authors have pointed out, they emphasise that these conditions do not automatically determine the outcome in negotiations, but rather ‘present the donors and recipients with constraints to consider in deciding what they think can be achieved through the negotiations’ (ibid). They then use the term ‘negotiating capital’ to refer to the leverage that a negotiator is able to derive from these structural conditions (ibid).

To translate the structural conditions into real power and influence in a specific negotiation situation can be difficult and will partly depend on an actor’s capacity and motivation to do so. Whilst the structures are not set in stone, how fixed and deterministic they are varies – as does how easy it is for actors to change them.

Having established that both structure and agency are important to analyse in aid negotiations, I will now review which structural factors seem to have an influence in aid negotiations.

### *Structural factors*

As highlighted by Whitfield and Fraser, the first step in analysing an aid negotiation is to develop a clear understanding of the structural factors within which actors define their preferences and select their strategies (Whitfield & Fraser, 2009b, p. 39).

The key structural factors very much depend on the context and the substantive content of the negotiations. As Elgström points out, the military strength of two opponents might be a key aspect taken into account in some negotiations while in others, such as aid negotiations, the military capacity of the donors and the recipient may be of little relevance (Elgström, 1992 p. 22-23).<sup>19</sup> For aid negotiations, following on from research by Elgström (1993) and Whitfield and Fraser (2009), it is more useful to look into the following four structural factors: 1) political and economic factors; 2) international norms and discourses related to aid; 3) organisational factors; and 4) perceptions of self and others. These factors are often more or less external to the negotiations themselves but still exert a strong influence on the negotiators' goals and behaviour (Elgström, 1992, p. 19).

The structural factors that surround the negotiations are, as we saw above, very different in how set they are and how easy it is for one or another of the partners to influence. Hence it might be useful to talk about 'Macro-level', 'Meso-level' and 'Micro-level' structural factors. *Macro-level factors* include political and economic factors as well as international norms. These are factors that are very difficult for an individual actor to influence, at least in the short-run. *Meso-level contextual factors* include organizational factors and perceptions of Self and Others. These factors are much more in the hands of the different partners to shape and influence, although it may be difficult in the short-run to compensate for, for example, weaker capacity and expertise than the adversary. Likewise, we can see perceptions both as being a structural factor, as well as part of something

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<sup>19</sup> Although military power can be used in trying to extract aid resources in return for demilitarization as, for example, in the case of North Korea.

that can change relatively quickly over time and is more in the control of the different partners to change. *Micro-level factors* are also about perceptions, but on a more individual level in the day-to-day interaction and the personal relationship that the actors engaged in a negotiation have with each other. Considering that aid negotiations are often characterised by what Whitfield and Fraser call ‘permanent negotiation’ due to the close engagement by the donors in the politics of the recipient country (Whitfield & Fraser, 2009a), these personal relationships are likely to be of more importance in aid negotiations than in other types of negotiations that might be of shorter term duration (Elgstöm, 1992 p. 156). Elgstöm, for example, shows how the positive Swedish images of Tanzania were strengthened by strong personal ties, with key officials looking upon one another as friends (ibid, p. 105). Different incentives at the individual level might also influence the negotiations, such as a hesitation to ‘rock the boat’ by taking a tough stand against the host government (Brown, 2012, p. 525; Gibson, 2005, p. 155).

#### *An overview of the different structural factors*

The following describes more in detail the different structural factors that may influence aid negotiations.

Political and economic factors: A range of political and economic factors, both domestic and international, can affect the relationship between donors and the recipient government. For countries whose economy depends on the export of natural resources, international commodity prices are likely to affect the power relations between the partners, with the recipient government becoming more dependent on aid the lower the commodity price. Global events including international crises, such as the current situation in Syria and the subsequent migration flows, divert finite aid resources from one part of the world to another.<sup>20</sup> How aid dependent the recipient government is and whether it has other resources that it can access, such as an abundance of natural resources or resources from emerging powers such as China, may also affect the power balance. How important the country is for political or geo-strategic reasons will

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<sup>20</sup> Syria, Yemen and Iraq receives a large part of the humanitarian funding, and the level of geographical concentration of humanitarian aid is much higher than five years ago (Development Initiative, 2017, p. chapter 4).

also likely have an influence, as the Cold War proved. Likewise, as Reno has shown, private capital flows from businesses can be a major source of income for weak but resource rich countries and thereby lessen their aid dependency (Reno, 1999, p. 7). As Lindsay and Fraser found, the political and economic situation in a specific country is also a decisive factor influencing donor behavior (Whitfield, 2009, p. Chapter 12). They identified that countries with a stable macro-economy and a government committed to improving governance were likely to have more influence in aid negotiations as donors had more trust in them (ibid).

International norms and discourses: As both Zeitz and Elgström have convincingly argued, norms and discourses can profoundly affect negotiations by setting boundaries for what is seen as general standards of acceptable behavior (Elgström, 1992, p. 24; Zeitz, 2015, p. 7). Norms surrounding aid include the norm that rich states should give assistance to poor people (Jackson, 1987, p. 545) and the principle of state sovereignty (Elgström, 1992 p. 26; Zeitz, 2015 p. 7). In humanitarian aid there are strong norms based on the humanitarian imperative of saving lives which guide interventions. During the 1980s and the 1990s with its focus on structural adjustment, conditionality was often used to force developing countries to comply with the wish of the donors. Following agreement of the Paris Declaration on Aid Effectiveness (OECD, 2005), there has, however, been a much stronger focus on the norms of country ownership with the recipient countries in the driving seat. The Paris Declaration principles outline that donors should take a less active role, aligning their support to country-owned poverty reduction strategies and that donors should, in principle, refrain from putting pressure on recipient countries (Odén & Wohlgemuth, 2011; Yanguas, 2018). The Paris Declaration and the subsequent declarations on aid effectiveness have been criticized for being hypocritical and it has been argued that donor involvement in recipient countries has actually increased with aid instruments, such as budget and sector support giving donors more insights into, and influence over, the recipient's public financial management system (Cammack, 2004, pp. 203–204; Sjöstedt, 2013).

Organisational factors and coordination: According to this factor, negotiations between countries are best interpreted as bargaining between organisations. The



capacity, interests and culture of organisations hence set the framework for the engagement and become key variables in explaining bargaining behaviours and outcomes (Elgström, 1992, p. 27). An analysis of organisational aspects can indicate which actors are relevant to study and what the capacity of these actors are (ibid). This approach also highlights the fact that there is internal bargaining within each actor in the engagement (ibid). For example, on the donor side there might be divergent interests between the Ministry of Foreign Affairs, the aid agency and the military (Gibson et al, 2005). In looking at organisational aspects, I will mainly focus on assessing the coordination between donors to see whether they form a uniform negotiation partner to the recipient government, or whether there are divergent interests between them. I will also review how the dialogue between the government and the donors is arranged, whether there are dedicated coordination groups, and how they are functioning. In addition, I will explore whether actors other than the donors and the state get involved in these coordination mechanisms, and whether these alternative service providers affect the negotiations.

Perceptions of Self and Others: This factor highlights actors' images, beliefs and assumptions of themselves and each other as important explanatory factors for the negotiation outcome and the strategies used (Elgström, 1993 p. 33). It analyses how 'foreign' involvements are received, experienced, navigated and assessed from the perspective of both key external and national actors (Elgström, 1992 p. 8). The influence of culture, framing and perceptions have been taken up, for example, by Autesserre in her influential work on peace-keeping missions (Autesserre, 2010, 2012), as well by Baaz and Stern in their work on Security Sector Reforms in Congo (Baaz & Stern, 2013). Perceptions are not bound by laws of natural science. Governments form and change their perceptions of other governments on the basis of various information flows, evaluations of events, and personal encounters in a highly informal and often arbitrary fashion (Fisher, 2015, p. 63). As Dunn (2003) notes in his research on the image of Congo among Western policy-makers in the 1960s to the 1990s, Western perceptions are based on 'a gradual layering and connection of events and meanings', stressing that there are few guarantees, however, as for 'which events will be selected' in this process (Dunn, 2003, pp. 124-125).

As Elgström rightly points out, national self-images also influence negotiation processes. The perception of a nation's role in the world is culture-bound. The national culture may comprise images of the nation's position in the international system and of the special qualities possessed by the state (Elgström, 1992 p. 34). A donor country may, for example, view their country as having a special mission in the world, as being a leader or a mediator (*ibid*). Images of self and others are also related to the image held of the bargaining situation itself. If a country regards itself as powerful and strong and the opponent as weak, it may come to expect obedience and not a negotiation between equals. Likewise, a recipient country can have a highly-esteemed nationalistic pride, despite high levels of debt and a reliance on international aid. Cases that comes to mind are, for example, India, that in the 90s asked smaller bilateral aid agencies to leave, and Rwanda, where President Kagame often makes statements like 'Africa doesn't need baby-sitters' (Jeune Afrique, 2018), referring to the fact that they might need aid now but they will soon overcome poverty and they know how to do this without unsolicited advice from the donors.

Hence reviewing the perceptions that the donors and the recipient governments have regarding their own role and influence is an important 'building block' in understanding engagement strategies in aid negotiations. Contrary to what one might have expected, even in aid dependent countries, donors often perceive that their influence is rather weak. This is shown, for example, in Brown's work on what he argues is donor officials' apologies for non-democratic regimes in Africa (2011) and in Fisher's investigation into why donors abandoned taking 'a political' approach in their election support in Uganda (Fisher, 2013b, p. 472). Building on the work of Fisher and Brown, these factors can be divided into 'real' and 'perceived' factors that limit the donors influence. Among the 'real' ones we find the following: a) the relatively short time that donor officials spend in the country, which makes it difficult for them to fully understand the situation; b) career incentives that reward officials for building strong relationships with the governments in order to get access to information and a better opportunity to exert influence; c) pressure to spend aid allocations which is not facilitated by worsening relations with the host country; d) competing foreign policy priorities – efficient aid allocation might not be the most prioritized task; and e) internal

politics in the donor countries, such as competing priorities which might prevent a joint approach towards the host government (Brown, 2011, pp. 524-526; Fisher, 2013b, pp. 482–485). Added to this is the perception that the donors have of their own influence which can become self-fulfilling. If you believe that nothing you will say or do will change a situation, you might refrain from making an effort in the first place (Fisher, 2013b).

Another interesting point when it comes to perceptions is what Brown (2011) called the ‘Stockholm Syndrome’, or to use the anthropological term ‘the going native’ factor. This happens when donor officials over-identify with the host government to the point that they defend non-acceptable behavior in the name of a higher goal. This can go so far as to defend the host country’s interference in other countries (Brown, 2011, p. 526). For example, when the Rwandan-backed rebel group, the M-23, took over parts of eastern Congo I was based in Kinshasa and was astounded by the fierce denial by some donor officials in Kigali regarding Rwanda’s involvement, despite compelling evidence from several UN investigations.<sup>21</sup>

Another aspect of perceptions that becomes relevant in countries characterized by hybridity is the extent to which donors perceive alternative service providers such as FBOs and customary chiefs as possible building blocks in their state-building agenda and whether the government sees these actors as competitors or possible partners.

In section 2.3 I will detail how some countries have managed to influence how they are seen by the international community by using various strategies of so-called ‘image management’, investing time and effort in order to create and portray positive images of themselves to the donors.

In summary, structural factors surround aid negotiations. It is important to stress that these factors are not in themselves determining the outcome in a negotiation, but they do have an influence on the negotiator’s behavior and positions. The factors outlined above merely provide the potential for influence; actors then respond to these conditions in their efforts to secure their desired negotiation

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<sup>21</sup> See for example the letter dated 12 October 2012 and the letter dated 12 December 2013 from the UN Group of Experts on the Democratic Republic of Congo to the Chairman of the Security Council Committee (UN, 2012a, 2012b).

outcomes. In the next section, I will also look at the different strategies that donors and recipient governments are using and how they are employing these strategies to strengthen their negotiation capital.

### 2.3. Negotiation strategies

As shown in the introduction, donors and recipient governments have different objectives, motivations and interests that they pursue in aid negotiations. For the recipient government it might be driven by a genuine interest to get access to resources to develop their countries or it might be, to use the terminology of Bayart, to extract resources in order to secure the survival of the ruling regime. Equally for the donors, there might be more or less benign motivations, such as to be seen as a generous and humanitarian actor in the international sphere or to be driven by 'real politics', such as ensuring the willingness of the recipient country to host military bases or to secure the access to strategic natural resources, such as oil (Lancaster, 2007, chapter 2). Donors' capacity to engage effectively is compounded by their difficulties of getting an in-depth understanding of the context and the incentives of their counterparts. These difficulties are linked to a) their own organizational structures, such as frequent rotation, and small number of staff members which means each staff member has to deal with a large number of diverse issues; b) the limited availability and up-take of political economy analysis of the country/sectors (Fisher, 2013b; Hughes & Hutchison, 2012; Unsworth, 2009; Yanguas & Hulme, 2015); and c) limited access to conflict affected areas in fragile states (Fisher, 2013b). Consequently, the strategies that donors and recipients pursue will be influenced by the incentives, motivations, capacities and the structural factors outlined earlier.

In their comparative analysis on aid negotiations, Fraser and Whitfield found that recipient governments made use of a number of different strategies to advance their objectives and to increase their leverage. These included: i) using strategies such as negotiating with donors separately to make it harder for them to 'gang up' towards oneself; ii) separating the policy discussions within the government from the discussions with donors; iii) centralizing the structures and processes through which aid is sought and received in order to maintain control; iv) rejecting technical assistance aid, unless it meets the recipient governments' needs; and

v) paying 'lip service' to the conditions put forward by the donors in the hope that the donors won't stop funding (Whitfield and Fraser, 2009, pp. 369–370). What these strategies have in common are attempts to ensure that the recipient country is in the driving seat, by limiting the influence that the donors might have on policy processes and issues. They found that the strategy of paying lip service to reforms was particularly popular amongst the weaker states (ibid p. 21). This strategy goes back to Bayart's concept of extraversion in which he referred to the process of attracting international resources through the professed commitment to donor agendas, and subsequent use of these resources to reinforce the position of the ruling regime (Bayart, 1993, p. 20).

As we saw in the introduction chapter, the concept of extraversion has been further developed by Fisher and Beswick who have looked at African agency in two aid recipient countries - Uganda and Rwanda - and their relationship with the donor community. They show how some regimes have managed, despite a strong dependency on aid, to carve out a substantial space for policy manoeuvre. They have achieved this through successfully developing strategies to 'manage' the donors by creating an image of themselves as important to the international community by, for example, being seen as allies in the fight against terrorism or as successful cases of reducing poverty. As a consequence, these countries have managed to secure aid flows and room for policy manoeuvre despite their aid dependency and their less than impressive records concerning human rights and democracy, that donors usually push for (Beswick, 2007 & 2013; Fisher, 2013a & 2015). In fairness, as also highlighted by Fisher (2015), these policies are not always adopted or 'manoeuvred' just to please the donors. The country might very well have a sincere wish to pursue policies favoured by the donors, such as to reduce poverty, fight terror groups etc. The difference lies instead in how these countries, regardless of the motivation, manage to 'sell themselves' to the donors. Fisher identified in the case of Rwanda and Uganda that they actively used the following strategies: 1) a personalisation of diplomacy, such as providing access to donors to sustain close relationships; 2) use of public relations firms; and 3) engagement with non-governmental actors such as the media and business communities. Both Museveni and Kagame have, for example, been keen to speak at think tanks, academic institutions and business associates in

the UK and the USA, as well as generously giving interviews to major international news outlets, such as the BBC, CNN and the Economist (Fisher, 2015 pp. 71-76). This has given them opportunities to frame the image of themselves.

Not all countries have the capability to successfully manage donors in the same ways. However, as I have shown in the introduction to this chapter, a country's vulnerable situation can also be used as a means to extract aid or to prevent the donors from attaching conditionality to their support. In his paper on aid effectiveness in Afghanistan, Zürcher (2012) shows how conditions of fragility might actually increase the bargaining position of domestic elites. He argues that donors might be reluctant to put too much pressure on elites, especially if they are seen as the only safeguard for security and stability (Zürcher, 2012, p. 468). He claims that, as a result, elites in fragile states tend to be tougher in negotiations, whereas donors tend to be more lenient (*ibid*). The question is whether Afghanistan is exceptional due to the heavy security-investments by the international community in the country or if the same strategy can be used by other fragile countries. In addition, as highlighted by Beswick, a country's instability and the threat it may pose to the international community and/or to its neighbours can be a 'bargaining chip' to be used in the negotiations by the perceived weaker party (Beswick, 2013, p. 162).

### *Strategies favoured by donors*

Donors often use political dialogue and conditionality in order to seek to influence the behaviour of the recipient government. Conditionality has been usefully described by Frerks as 'the promise of increased aid in the case of compliance by a recipient with conditions set by a donor, or its withdrawal or reduction in the case of non-compliance' (Frerks, 2006, p. 15). This definition is useful as it includes both positive and negative conditionality - the carrot and the stick, whereas some authors have mainly focused on the negative aspect of conditionality, e.g. the threat of withdrawing assistance (Borchgrevink, 2008, p. 196). It is important to note this definition does not cover all uses of aid as incentives or disincentives in order to achieve specific objectives but only those where the aid is linked to the promise, threat or use of 'a *demonstrable reciprocal*

*follow-up action by the donor in the case of compliance or non-compliance with conditions set' (ibid.).*

Conditionality has become deeply politically charged and the literature is fairly unanimous in assessing the effectiveness of conditionality: in general it is considered to not work very well (Fisher, 2013b, p. 475; Killick, 1997; Rodrik, 1990). Killick has, for example, argued that donors applying conditionality are often unable to put in place a system of rewards or punishment sufficient to overcome the perceived conflicts of interest between themselves and the recipient country (Killick, 1997, p. 483). This does not mean that conditionality has no impact at all, and the literature shows that there is variation in outcomes (Borchgrevink, 2008, p. 198). Under certain circumstances the chances of conditionality achieving its objectives are greater. Two factors that, according to the literature, may increase the efficacy of conditionality are a) the degree of aid dependency of the recipient country and, b) the extent to which there is broad coordination on conditionality amongst donors (Borchgrevink, 2008, p. 199; Frerks, 2006 pp. 29 & 33). In addition, the existence of an influential domestic constituency for change, which the donors can strengthen by imposing conditionality, may improve the chances of success (Borchgrevink, 2008, p. 199). Donors, however, rarely resort to cutting funding. There are several reasons for this. First of all, the donors might be keen to keep a good relationship with the recipient government, or they may have reason to believe, rightfully or not, that the population rather than the government would suffer the consequences of the withdrawal of aid. Also, as highlighted by Yanguas in his article on aid strategies and donor politics in institutional assistance (2014), conditionality is not a costless strategy. Enforcement requires the monitoring of compliance through, for example, reliable indicators of progress, as well as credible commitment to sanctioning the recipient in case it doesn't comply (Yanguas, 2014, p. 304). But how to differentiate between the lack of political will to undertake the reforms (that might warrant sanction) and a lack of capacity to reach the objectives in which case more, rather than less, donor support might be called for to overcome the difficulties of implementation? These kinds of considerations take considerable time, insights and efforts (ibid), and donors might not have the necessary staff capacity and capability to properly judge and monitor compliance. In addition, as

noted by several authors, donor representatives in the field are often under pressure from headquarters to spend the aid budget in order to avoid seeing the budget cut the subsequent year (Yanguas, 2014 p. 305; Brown, 2013 p. 525; Gibson, 2005 p. 155). Hence, there might be several reasons for a donor's lack of commitment to follow-through on imposed conditions.

Uvin, when researching donor behaviour before the genocide in Rwanda, makes the interesting point that although conditionality might not convince a government to adopt policies it doesn't want, there might be another, more indirect and long-term, reason for using it (Uvin, 1998, p. 236). He argues that, in aid dependent countries, people carefully monitor the discourses and actions and inactions of donors. This is not only the case of people in the government and in the opposition but also people in general. Hence, whatever action donors take will send messages and constitute political acts that will have some impact on local political and social processes (ibid). This includes cases where the donors are taking no action at all, such as not reacting in situations of increased human rights abuses or the prosecution of political opponents by the recipient government. In situations like this, the population might see the donors as complicit with an illegitimate government. This argument is closely related to the accurate point made by Yanguas that *'by virtue of their very presence in a country, donors can sometime become sources of legitimation in the eyes of local actors, whether they want that responsibility or not'* (Yanguas, 2018, p. 127).

Harrison argues, in his book on the relationship between the World Bank and a number of indebted African countries, that the 'period during which donors constantly policed reform through the threat of a freezing or withdrawal has passed' (Harrison, 2004, p. 71). Instead he shows how donors are increasingly using softer and more indirect approaches to wield influence over the recipients, for example, by a closer engagement with key state institutions like the Ministry of Finance and through intimate involvement in administrative reforms and capacity building programmes. This at times involves the embeddedness of donor financed staff in recipients' ministries and agencies. Harrison argues that this constitutes a less visible but also perhaps more powerful role for donors who thus may get to influence the recipient's poverty reduction strategies and other core policy documents (Harrison, 2004 p. 77). This form of involvement, he



argues, blurs the external and internal interest and makes the donor - state relationship too interrelated to be understood as a dichotomy (Harrison, 2004 p. 90). A similar point has been argued by, amongst others, Cammack (2004) in his paper on the World Bank and poverty reduction strategies. Another, and rather interesting, form of how this indirect influence works is to look at the number of high level politicians in African states, most notably Ministers of Finance, which have previously worked for the World Bank and/or IMF. This is one avenue through which the thinking of these institutions is promoted inside the recipient governments. A case in point is, for example, President Ouattara in the Ivory Coast who previously held senior positions at the IMF.

When Harrison wrote his book in 2004, he focused on a number of African countries that he referred to as 'governance states'. These were countries where the elite had embraced the good governance model promoted by donors and where donors had started to elaborate with aid modalities, such as general budget and sector budget support. As Lancaster has shown, donors in the early 2000s used a policy of 'selectivity' in which they chose to invest more heavily in countries based on not only the macro-economic policies the recipient governments pursued, but also on their perceived quality of governance (Lancaster, 2007, pp. 52-53). The Paris Declaration on Aid Effectiveness (2005) gave further promotion to concepts such as country ownership and aid modalities such as budget support. This considerably broadened the number of countries in which the donors tried to use the post-conditionality form of aid. It was no longer to be applied only in countries that were judged to have 'good governance'. The Paris Declaration and subsequent aid effectiveness declarations (Accra Agenda for Action in 2008, and the Busan Aid Effectiveness Declaration in 2011) does not totally rule out the use of conditionality but the word nonetheless became unfashionable (Yanguas, 2012). Donors, such as DFID, declared that it was abandoning conditionality in favour of dialogue and partnerships based on national ownership, shared commitments and mutual agreements, stating that *'we will not make our aid conditional on specific policy decisions by partner government or attempt to impose policy choices on them'* (DFID, FCO, & HMT, 2005, pp. 2-6). Although, the principles of the Paris Declaration and the subsequent New Deal in many ways are theoretically sound, the problem starts

when the principles hit reality. What do you do if the regime in the recipient country is unwilling to develop the country? How then do you build state-capacity? Neither the Paris Declaration nor the New Deal have any answers to this dilemma. An independent review of the New Deal highlights that although it has had a significant impact on global norms and policies, implementation has been more complex. It also notes that significant additional resources have not been directed to the State and Peacebuilding goals (Hearn, 2016, pp. 11–12). In addition, despite the rhetoric on increased ownership and need to use country systems, several bilateral donors are no longer using budget support as widely as they used to. For example, in 2016 Sida did not make any payments in the form of budget support<sup>22</sup> and DFID, who used to be one of the champions for budget support, has currently a leadership that is hesitant towards it.<sup>23</sup> The work on implementing the New Deal is, however, still on-going and in the Stockholm Declaration from 2016, the signatories recommitted to the principles. The need to increase funding and to link the work to the Sustainable Development Goals (SDGs) and in particular the goal 16 on Peace, Justice and Strong Institutions were also emphasised (International Dialogue, 2016).

One result of the focus on aid effectiveness and budget support, that is worth mentioning here, was that some donors, notably DFID and the World Bank, started to undertake detailed political economy analyses in order to identify the bottlenecks to reform. The idea was to identify so-called ‘drivers of change’, including institutions and people within the administration that the donors could work with. This type of analysis is still being undertaken although several shortcomings, such as difficulties in translating findings from the reports into practice, have been noted (Hughes & Hutchison, 2012; Unsworth, 2009; Yanguas & Hulme, 2015, pp. 209–210).

In order to analyse and understand engagement processes, it is not enough to only look at the aggregate picture. Rather it is important to understand and take into account that processes might look very different depending on the topics

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<sup>22</sup> <https://www.sida.se/Svenska/sa-arbetar-vi/Detta-ar-svenskt-bistand/Budgetstod/>.

<sup>23</sup> <https://www.devex.com/news/dfid-turns-20-the-7-politicians-who-shaped-uk-aid-90995>.

being negotiated and the level at which the negotiations are taking place - whether at the central level, provincial level or the district level.

## 2.4. Negotiations within different sectors and different levels of engagement

While going through the literature on aid negotiation I found that much of the literature is: a) aggregated in the sense that it focuses on aid negotiations at the central level, and doesn't follow through on how the negotiations look at the provincial and district levels; and b) even though some of the literature reviews aid negotiations in different sectors few makes comparisons between negotiation strategies pursued in one sector compared to another. For example, Whitfield's book on *'The Politics of Aid'* builds on eight case studies from Africa. While some contributors to Whitfield's book draw on examples from different sectors to illustrate the negotiation process, e.g. Bergamashi (2009) in her study on patterns and limits of donor-driven ownership in Mali, and Hayman on her study on creating policy space in spite of aid dependency in Rwanda (2009), most of them don't draw any comparisons between the sectors.<sup>24</sup> Neither does Whitfield in her conclusions of the case studies. Likewise, Trefon (2011), who in his book provides valuable insights into aid inefficiency and reform failure in Congo, doesn't provide an in-depth analysis of variances in different sectors. By aggregating the data related to, for example, how country x and the donors negotiate, the literature ignores that actors, considerations and strategies used at national, provincial and district level might differ. In addition, by aggregating the findings, the analyses omit that the negotiation processes might look very different depending on the nature of the topic being reviewed.

### *Negotiations within different sectors*

There are reasons to believe that aid negotiations will differ depending on the subject area being discussed. For example, negotiations on justice or security sector reforms are likely to be quite different from negotiations over health or education support. The former is more political and hence is more likely to be

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<sup>24</sup> One exception is de Renzio and Hanlon's chapter on Mozambique that identifies that the Mozambique government was subservient on trade liberalisation for cashew nuts but refused to compromise on land reforms and corruption where the leadership had personal interests at stake (de Renzio & Hanlon, 2009).

sensitive to the recipient government and for national sovereignty, which is likely to affect their motivation and their negotiation strategies. For example, in their review of security sector reforms Baaz and Stern highlight that it is difficult for a country to openly share information about such sensitive topics as military reforms, which might lead to less open and trustful negotiations (Baaz & Stern, 2013, p. 207). In addition, the interests and motivation from external actors are also likely to be different, sometimes involving a different set of actors. Whereas the social sectors are usually in the domain of traditional development actors, politically more sensitive areas, such as security sector reforms, are likely to involve not only aid workers, but diplomats and the military as well (Lancaster, 2007, p. Chapter 1).

Depending on the sector being analysed, the nature of hybridity in the sector will also vary. The service sectors generally have more engagement from religious institutions and NGOs (local as well as international ones), while more politically sensitive domains will be more dominated by traditional authorities and militias alongside state institutions. The way donors react to the hybridity of the sector is also likely to differ as they are probably more familiar and comfortable with working with service delivery FBOs and CSOs that are seen to complement state institutions rather than challenge them. To actively work with and negotiate with actors such as militias is more openly challenging to the authority of the state.

That negotiation strategies might differ between sectors also goes back to what Habeeb describes as ‘aggregated structural power’ and ‘issue-specific structural power’ (Habeeb, 1988). He uses the terms to explain why in negotiations between weak states and more powerful states on politically sensitive matters (focusing on Western countries) the apparently weaker state can achieve outcomes at the expense of the stronger. He looked at, among others, how Iceland could extract major concessions from the UK in the Anglo-Icelandic ‘cod wars’ in the 1970s. His term ‘aggregated structural power’ equals the structural conditions and factors discussed in the section above, whereas the issue-specific structural power relates to the topic being discussed. He convincingly argues that the balance of issue-specific power is determined by three interrelated variables of: i) alternatives; ii) commitment; and iii) control. The availability of alternatives may increase an actor’s issue power by decreasing its dependence on the other actor.

However, lack of alternatives might also increase an actor's commitment to reach an agreement and hence make them invest more time and resources to get their preferred outcome. 'Control' refers to the amount of control a partner has over the thing that the other party wants. Depending on the issue-specific power, a situation that, on the surface, looks detrimental to a party from an aggregated structural power point of view may actually turn out to favour the more dedicated actor (Elgström, 1992, p. 23; Habeeb, 1988, p. 22). As Whitfield and Fraser, Habeeb also points out that although aggregate power only changes slowly over time, the elements of issue-specific power can change rather quickly in the short term if the actors apply appropriate tactics (Habeeb, 1988).

Hence, as we have seen before, the aggregated structural factors might point in one direction but when analysed sector by sector, the structural factors that matter might be different. For example, in sectors where vital national interests are at play the government's intensity of commitment is likely to increase and hence the opportunity for an apparent weaker government to achieve a favourable outcome at the expense of the strong is likely to increase.

#### *Different levels of engagement*

In a similar vein, depending whether the engagement is at the national, provincial or district level, the actors, their incentives and motivations as well as their negotiation strategies, will differ. Donors rarely have permanent presence outside the capital and usually negotiate their programmes with the line ministries at central level. They tend to confine their interactions with provincial and district level authorities to adhoc meetings, often in connection with the establishment or monitoring of programmes. As a consequence, programmes are often decided upon at the national level with only limited input from government officials at the provincial or district level.

The regular interaction with lower level authorities is instead often left to the contracted implementers, which tend to be either consultancy firms of international or local CSOs. This changes the dynamics. For example, the main interest of the implementer is to achieve the results that the donors have contracted them to achieve and the possibility to adapt the framework once approved is usually limited. This makes the contracting partners less flexible to

adjusting their work to local realities and to the wishes of the authorities (Gibson, 2005, pp. 166–170). In addition, contractors usually have limited interest in aid coordination, which is often seen as taking time and resources from the implementation of the result frameworks. The power of provincial and district level actors also tends to be weaker as resources are usually scarcer at lower levels and hence the dependency on aid higher. The fact that donors are not very active at the local level might also prevent them from fully recognising that from a bottom-up perspective there are other actors than the state that are providing services to the population and that form the real governance on the ground.

## 2.5. Real governance, predation and state building

The widespread disillusionment with the ‘failed state’ discourse on African governance, as well as the fact that most of the states haven’t turned into complete anarchy, has renewed attention to the different forms of governance arrangements that exist (Meagher et al., 2014, p. 1), and how local forms of order and authority have held societies together (Hagmann & Peclard, 2010 p. 541; Meagher, 2012, p. 1075). As a consequence, the first decade of this millennium saw emerging theoretical perspectives revolve around notions of governance without government, negotiated or mediated states and hybrid political orders (see for example Boege et al., 2009; Raeymaekers et al., 2008; Hagmann and Péclard, 2010, Menkhaus, 2008).

By focusing on so-called ‘governance without government’ and looking at service provision from a bottom-up perspective, academic research has shown that, even in states that are generally considered as failed, public service provision often continues through what Olivier de Sardan calls real governance (Olivier de Sardan, 2008, p. 1). This means that in order to understand statehood, we need to pay attention not only to state institutions but to the whole spectrum of formal and informal actors in the field of power around state institutions (Titeca & Herdt, 2011; Olivier de Sardan, 2008). By focusing on function of governance rather than form, it becomes easier to recognize that there are both formal and informal institutions that are undertaking core governance functions, such as offering protection from external threats, resolution of conflicts and providing and facilitating the provision of a range of collective goods and services (IDS, 2010).

It should be noted that the term hybridity is being defined and used differently depending on whether researchers focus on fragile states or more stable countries. The African Power and Politics Programme (APPP),<sup>25</sup> that has focused on African forms of governance and how some neo-patrimonial states have indeed been developmental despite not following the Western model of good governance is using the term practical hybrids for systems that are 'combining the authoritative coordination which can come from a developmental neo-patrimonial state with an enabling environment for local problem-solving and a constructive use of culturally legitimate ways of working' (Booth and Crook, 2011 p. 101). The research programme has been reviewing how elements of the modern state adapt to local preferences and accepted ways of doing things. Hence, the emphasis is on how so-called modern institutions functions and their blending with local culture and beliefs. They convincingly argue that the 'grain' of popular demand in contemporary Africa is not a desire for 'traditional' institutions, but rather for modern state structures that have been adapted to, or infused with, contemporary local values (ibid).

Within the fragility state literature researchers have used a bottom-up approach to see what institutions that already exist on the ground in countries with limited statehood. Within this research, the state is only one of many actors that are providing governance and various actors with their own form of authority and legitimacy exist alongside each other in the same socio-political space, and in which (especially at a local level) a variety of relationships exist between divers actors (De Herdt & Titeca, 2019, p. 6).<sup>26</sup> It is important to emphasise that within the fragility research the customary chiefs, spiritual and religious leaders, militias, community groups etc. are not seen as mere non-state actors but are recognised as part of the real governance. It is not seen as an ambition or goal to be reached, but rather a description of the situation in many fragile states (Moe, 2014, p. 38; Boege et al 2009b). To put it simply, this approach analyses which actors are providing services and governance on the ground to the population and how

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<sup>25</sup> The main research question for APPP was: 'What kinds of institutions and ways of exercising power work for development in Africa' (African Power and Politics Programme – a joint statement from five-research programmes, April 2012, p. 7).

<sup>26</sup> Luckham and Kirk define hybrid political orders as 'characterized by complex interactions among a variety of actors following different animating logics and drawing on varying sources of authority within fragile and conflict-affected spaces' (Luckham & Kirk, 2012, p. 12).

these are interacting and co-existing with the state, whereas in practical hybridity as defined by APPP it is more the blending of the modern state and local culture that is the focus of research. Hence, the practical hybridity as defined by APPP goes one step further in the analysis of hybridity as it looks at the blending of modern institutions with traditional norms, whereas in fragile context this blending is not yet apparent as modern state institutions are absent to a large extent or extremely weak.

In this thesis, I am using the term hybridity in the same sense as it has been used in the fragile state research, namely to see which actors are actually providing services to the population and how they interact with the state. I will analyse how the hybridity or real governance in the health and justice sectors function and how this might affect the negotiations between the donors and the government.

So what does this real governance mean for the practical functioning of state institutions, and for the governance process at stake? First regulatory processes are profoundly affected. The powers to sanction are not centralized in one institution, and are neither part of a hierarchical relation nor institutionalized in a systematic relationship between various institutions. There is no monopoly on regulation; neither the state or any other institution has a privileged position or a unique legitimacy to enforce its regulatory monopoly (Bierschenk & Olivier de Sardan, 2003). In other words, local regulatory power is fragmented. Regulation is therefore prone to continued change, in which neither the state nor non-state actors (customary chiefs, FBOs, community groups etc.) have a monopoly of regulation. All of this give shape to what De Herdt and Titeca (2019, p. 19) call the 'weblike society of Congo'. This demonstrate the problem with analyses that build on a dichotomy between state and society (ibid p. 13).

As a result of the hybridity, local level political arenas are highly fragmented, and extremely complex to understand, especially for donor officials that are only in a country for a few years, and who most often are based in the capital, where this hybridity tend to be less noticeable. Despite these challenges for donors, engaging with the real governance is necessary if there is genuine concern about the impact of one's interventions in weblike societies. It also allows the donors to build on structures that already exist on the ground rather than to build up



completely new ones. An important factor to analyse is whether to build on real governance or not is the question of the various actors' legitimacy and who defines the legitimacy of hybrid governance arrangements: academics, donors, states or the population. It is important to understand the extent to which hybrid arrangements are normalized, institutionalized and seen as socially legitimate (Meagher et al., 2014 pp. 2&5)

One reason why donors have often failed to consider informal service providers as potential partners in post-conflict reconstruction and state-building is due to a perceived contrast between state-building and service-provision through non-state actors (Allouche, 2013). Donors have feared that by building up informal institutions they would undermine state authority and that the failure to support direct state delivery of essential services would negatively affect the legitimacy of the state (McCloughlin, 2015; OECD, 2010, p. 118). However, as research has pointed out, there are multiple pathways to post-conflict state-building. While policy makers and donors may see state-building as institution building of formal state actors, it might be more helpful to think of state-building initiatives in a multi-institutional, or hybrid, context (Allouche, 2013).

While there is a growing realisation within the donor community of the need to rethink state-building and to consider different governance systems, there are few concrete guidelines on how to do so. As pointed out in the introduction, much of what has been written, for example, by the OECD still misses some of the main points such as there not always being a clear-cut separation between non-state and state-actors in fragile states. The New Deal while recognizing that state-building is not only about the state fails to recognize the complexity of the relationships between state actors and non-state actors, and how those relationships can be built upon.

Despite the rather rich academic literature on real governance and hybridity in fragile states we know relatively little about how donors and governments are interacting with the breadth of actors while negotiating aid. Do they involve these other actors in their discussions and negotiations on issues related to state-building? If not, how does this affect the complex relationship and linkages that often exist between the non-state actors and the state? These are important

factors to consider and have so far been more or less neglected in the academic literature on aid negotiations.

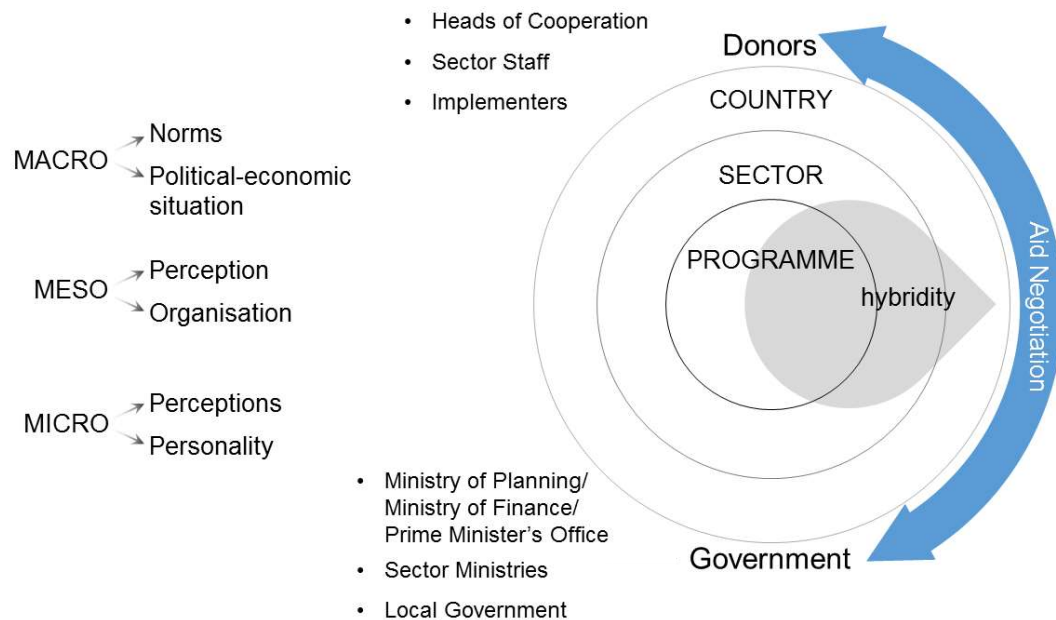
It is no surprise that predatory states have been seen as archetypes for hybrid states. As Reno points out, predatory state regimes often purposefully undermine institutions and economic transformation (Reno, 2015, p. 731), which then open up space for other actors. Instead, wider political authority is exercised through extensive networks of personal patronage that include inefficient bureaucracies staffed with officials selected for their political loyalties rather than for their technical skills (ibid). This intentional weakening of bureaucracies creates obstacles to economic growth, leading to declining economic growth and diminished social welfare measures (ibid). Although these states are often labeled as failed or fragile due to their divergence from conventional expectations about how states should perform (see e.g. Ghani & Lockhart, 2008), as Reno highlights, predatory governments can be successful in staying in power and can remain stable for long periods of time as the case of both Mobutu and Kabila shows (Reno, 2015 p. 731). In addition, as he also points out: *'Predatory states demonstrate surprising capabilities to manipulate otherwise much stronger partners'* (ibid, p. 742). This certainly holds true for Mobutu, who managed to co-opt the donors, though Kabila has been less skilled in this game.

## 2.6. Towards a conceptual framework

The review of existing literature on aid negotiations from the previous section suggests that there are some limitations in how negotiations have been viewed in previous literature, for which a new conceptual framework would be useful. I identified three such gaps, which can be summarized as follows: First, there has been too much focus on structures over agency; and particularly recipient government's agency has been neglected. While structural factors are important they largely provide the constraints within which actors operate. Actors respond to these conditions in their efforts to alter the power balance to secure their desired outcome, and insights into what shapes their efforts seem important to advance our understandings of negotiations. Second, the current literature has largely not been sector and scale-specific. Much of the analysis of aid negotiations has been aggregated in the sense that it doesn't take into account

the separate national, provincial and district levels involved in aid processes, and thereby ignores that the actors involved and the strategies they use might differ at different levels of negotiation. In addition, by aggregating the findings, the analyses usually haven't taken into account that the negotiation processes might look very different depending on the nature of the issue being discussed and its importance to either party. Third, we saw how little or no account has been taken into the hybrid nature of the recipient states and how this may or may not influence the negotiations. This is a serious oversight considering that many fragile states are indeed hybrid, in the sense that the state usually has to share its authority with a number of non-state actors. Although all countries have some dimensions of alternative sources having some authority, what is different in very fragile states is that these non-state actors are a) more powerful in some sense, and b) take over state-like functions. In an attempt to address these gaps, I have developed a conceptual framework that will structure my research. The framework builds on previous research by, amongst others Elgström (1993) and Whitfield (2009).

Figure 1: Conceptual model for aid negotiations



On the left-hand side of the figure 1 have listed structural and agency factors that surround the negotiations. I have divided them into macro, meso, and micro level

depending on how easy it is for an individual to change them. For example, the economic power or international norms on aid might be difficult for an individual actor to change, whereas organizational factors as well as perceptions are easier to influence. Hence there is a constant interaction between structure and agency, and this will be taken into account when I look at how donors and the government have engaged with each other, and what strategies they are using to achieve a favourable outcome in the negotiations. I will explore this issue both in chapter 4 on the overall negotiations between the donors and the government and in chapter 5 on the health and justice sectors.

In the middle of the figure 1 have identified the different levels and the different sectors and how they influence the negotiations. First there is the country level, meaning the overall negotiations between the government and the donors. Under this overall level there is the sector level in which I suggest that different sectors should be analysed in order to draw out comparisons between the sectors and how this affects the negotiations. To really understand negotiations in-depth I also suggest that one needs to follow individual programmes from the central level where aid is being negotiated between the donors and the sector ministries, down to the provincial and district level, where programme implementers have the main interaction with local government officials.

Within these circles there is also the question of hybridity and how the sectors in which the negotiations are taking place are hybrid and how this may or may not affect the negotiations. I will review this in chapter 6. The reasons that previous aid negotiation literature hasn't dealt with the hybrid nature, I would argue, are related to the aforementioned fact that the researchers have been focused at an aggregated level and not on the sector or local level – where the hybridity of a country becomes more visible. Another possible explanation for this omission is that much of the literature has focused on more stable and stronger states where the governments have not, to the same extent, been forced to share authority with other actors as many conflict and post-conflict countries with weaker governments have been forced to do.

Finally, to the far right there are the processes surrounding the negotiations themselves, that are affected by all of the above-mentioned factors.

While this framework could no doubt be improved upon, it is a useful scaffolding upon which to organize my research and highlight some of the findings that help address the gaps related to agency, sectors and hybridity that I outlined earlier.

## 2.7. Conclusion

Despite an increasing amount of literature on aid negotiations, there is currently not much empirical knowledge on how donors and governments have tried to negotiate their way in a predatory state like Congo, and how the donors have engaged with the elite in order to build ownership and state-capacity. Based on gaps identified in existing aid negotiation literature I have developed the conceptual framework (figure 1 above) to guide my research and through which I will analyse the structural factors that surrounds the negotiations and how different actors have used their agency to influence them to their advantage through the use of different strategies, whether this is through extracting resources in a rather passive way by simply paying lip-service to reforms as identified by Bayart (1993, 2000), or more proactively using 'image management' strategies. The framework will also be used to assess different negotiation strategies between different sectors and between central and local negotiations as well examine to what extent hybridity might influence the negotiation process.

It is important to underline that it is not a static framework and that the outcome of negotiations will of course depend on how the structural factors look in different contexts and how skillful the different actors are in using them to their advantage. The conceptual framework has been built to analyze aid negotiations in Congo, however, I believe it will be a useful model for exploring aid negotiations in other countries as well.

Although Congo is different to many other aid receiving countries mainly due to its strategic importance for the donors, there are indeed other countries that are of equally strategical importance for the donors and that can use this position as a bargaining chip. For example, the Sahel countries, Somalia and Afghanistan could all use the potential threat of terrorism to secure more favourable aid conditions. Hence, it would be interesting to apply this framework in these contexts as well, to see what influence this have had on the donors' and the governments' aid negotiation strategies.

## Chapter 3: State Failure and Aid in Congo

### 3.1. Introduction

This chapter presents an historical overview of the Congolese state. To understand present aid relationships in Congo requires looking back into history as current configurations have their roots in Belgian colonialism. It is important to retrace the political and administrative trajectory of the country, from its origins during Belgian colonisation through independence, to the long rule of Mobutu Sese Seko<sup>27</sup> (1965-1997) and through to the present day. This allows for a contextualisation of the failures of state-building by looking at the roots of state weakness and the role foreign interventions and development aid have played in the shaping of the Congolese state.

The history of Congo has been marred by successive conflicts, economic mismanagement, widespread corruption and severe poverty, and this has shaped Congo's present and its political culture. I explain how the current Congolese government functions, detailing its dependence on patrimonial networks and weak state institutions that are not set up to provide a check on its power, but rather to prey on the population, and how this situation has existed since the country's independence from Belgium.

To put the aid negotiations into context I will review what development assistance to Congo looks like today and what, if any, significant changes have taken place since the first democratic elections after independence were held in 2006. I will also look at how the number of donors has diversified from the Mobutu era, when it was mainly Belgium, France, the USA and multilateral development banks that operated in the country.

I also provide an overview of aid in the two sectors that I focus on in this thesis, the health and justice sectors, along with information about the donor programmes that I followed in those sectors.

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<sup>27</sup> His Christian name was Joseph-Desiré Mobutu.

### 3.2. The turbulent history of Congo

#### Colonial period (1886-1960)

In the mid-1800s, when the European powers effectively divided up the African continent, the Congo was granted by other western states to King Leopold II as a 'personal concession' ironically named the Congo Free State. The King had from his youth longed for a colony that would enhance the importance of Belgium and manipulated European leaders to grant him the right to the Congolese territory (Ewans, 2003, p. 167).<sup>28</sup> The Congo Free State was administered as the private property of the King and, aside from the King himself, there was no connection to the Belgium state (ibid p. 168). King Leopold camouflaged his intention by promising to establish free trade and anti-slavery in the territory (Reybrouck, 2012, p. 84). Despite the rhetoric, King Leopold ruled the colony (which he never visited) with particularly brutal force, using its rubber plantations to amass great personal wealth (Weiss & Carayannis, 2004 p. 116; Hochschild, 2006). External pressure and protest over widespread human rights violations eventually forced the reluctant Belgian government to take over the administration. In 1908, Congo became a Belgian colony (Weiss & Carayannis, 2004 p. 117; Ewans, 2003 p. 170). Although the Belgians established a much more elaborate administration with extensive primary education, mainly provided by the churches, they still focused on extracting resources and did little to encourage Congolese development (Stearns, 2011, p. 7). On the contrary, the Belgians acted according to the principle of 'pas d'élites, pas d'ennemis'; the colonial theory that an educated African class would create nothing but trouble for the colonial 'masters' (Wrong, 2001, p. 52). All important positions in the administration and the military were held by foreigners and the Belgians didn't prepare the country to administer itself (Stearns, 2011 p. 330). Indeed, the Belgians had expected as late as 1955 that independence would be decades away (Nzongola-Ntalaja, 2002, p. 81). Hence, they were totally unprepared by the Congolese intelligentsia's demand for the immediate freedom for their country

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<sup>28</sup> He did so by, in great secrecy, sending the explorer Henry Morton Stanley, up the Congo to establish a presence on the ground and sign up local chiefs (Ewans, 2003 p. 168).

and the riots for independence that ravaged the country in 1959 (Reybrouck, 2012, Chapter 6).

As a consequence, when Belgium reluctantly turned the country over to the Congolese in June 1960, the country had only 16 university graduates and was ill-prepared for governing (Reybrouck, 2012, p. 257).<sup>29</sup> The withdrawal was one of the most abrupt in African history (Wrong, 2001, p. 53) and the negotiations that preceded independence were concluded in less than seven months (Reybrouck, 2012, Chapter 6). By leaving the country so unprepared, the Belgians hoped to still rule the country informally (Ewans, 2003 p. 173). The Belgians retained control over much of the economy (Moshonas, 2012, p. 108) with large interests in the mining industry (Turner, 2013; Nzongola-Ntalaja, 2002, chapter 2). Hence, the conditions for the newly dependent state were not favourable, and this was to have important consequences in the years that followed.

#### Independence, Civil War and Military Coup (1960-1965)

Everything that possibly could go wrong at independence did. The country immediately fell into chaos, and the years that followed were marked by ethnic rivalries, army mutinies, and power struggles. The violence led most Belgians and other foreigners to leave the country, seeing an outflow of teachers, doctors and the upper levels of the military (Reybrouck, 2012, pp. 280–281). The mineral rich province of Katanga declared independence, supported by Belgium who was keen to keep it within its sphere of influence. The UN eventually sent a peace-keeping force to the country to try to resolve matters. This put the UN at odds with Belgium and the U.K, and at times also with the USA. The country's first elected Prime Minister, Patrice Lumumba, was forced out of office in 1960 only ten weeks after taking office in September 1960. Joseph Desiré Mobutu, who had been representing Lumumba during the independence negotiations (until Lumumba was released from prison) and who had been appointed as the head of the Congolese army, had a big role in the ousting of Lumumba and in the establishment of a more western-friendly government (Devlin, 2008 p. 258;

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Turner, 2013 p. 37). A few months after having been ousted and imprisoned, Lumumba was sent by Mobutu to Katanga where he was executed by Katangan secessionists (Turner, 2013 p. 37). Mobutu was allegedly supported in this by the USA and Belgium.<sup>30</sup> In 1990 Belgium later accepted moral responsibility for Lumumba's death (Turner, 2013 p. 28).

From the time Congo was declared independent in 1960, the control and governance of the country became intertwined with the Cold War struggle between the USA and the Soviet Union. Until the late 1950s, the United States had generally avoided political involvement in Africa and had been dealing with the continent through the European colonial powers that effectively blocked Soviet influence in the continent. However, decolonialization in the 1950s and 1960s changed this (Devlin, 2008 p. 259). The Americans were convinced that the Soviets would try to turn Congo into a power base in Africa, to be used as its stepping stone to power and influence on the continent. Lumumba, who was a nationalist and Pan-Africanist, was not considered to be a communist. However, when he didn't receive the support he wanted from the UN Security Council to remove Belgian mercenaries from Katanga, he threatened to turn to the Soviet Union for support.<sup>31</sup> This greatly worried the USA who started to plot against Lumumba, supporting the so-called Binza group<sup>32</sup> who were led by, among others Mobutu. In 1964 Moïse Tshombe, the leader of Katanga, gave up the claims for independence and instead accepted the post as Prime Minister for Congo (Englebert, 2003, p. 17; Turner, 2013 p. 28). From September 1960 to 1965 Mobutu remained chief of the army, whilst the country was run by the President Joseph Kasa-Vubu. In 1965, however, Mobutu staged a coup d'état, which paved the way for his 32-year authoritarian regime (Devlin, 2008, pp. 259–260).<sup>33</sup>

On a social level the tumultuous years after independence took a social toll. Services deteriorated, employment plummeted, living conditions worsened and the use of extortion by the administration and army spread, leading to wide-

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<sup>30</sup> See for example Ludo de Witte's book 'The Assassination of Lumumba' (De Witte, 2002).

<sup>31</sup> The request for help to crush the rebellion, supported by the Belgians, was blocked by the Security Council (Reybrouck, 2012, p. 288).

<sup>32</sup> The group got its name after the part of Kinshasa (called Leopold ville during the colonial time) where most of the members lived.

<sup>33</sup> Larry Devlin, a former CIA officer provides an interesting account of the US involvement in Congolese politics in the early days of Congolese independence in his book 'Chief of Station, Congo: Fighting the Cold War in a Hot Zone' (2007). Including a detailed account over the US support to Mobutu.

ranging discontent with the central and provincial governments (Nzongola-Ntalja 2002 p. 126). Due to the chaotic situation, which Young has described as a veritable Hobbesian state,<sup>34</sup> no one really protested when Mobutu staged his military coup and eventually managed to pacify the entire country (Young, 1978 p. 170-171; Scharzberg, 1988; Englebert, 2006, pp. 57–58; Nzongola-Ntalja 2002 p. 145).

#### A brief period of state-building (1965-1974)

Once firmly in control over the country, Mobutu started to consolidate his power. Commonly portrayed as one of the most corrupt and kleptocratic dictators in Africa's history (Wrong, 2001 p. 11; Putzel et al., 2008 p. iii), it is easy to forget that during Mobutu's first decade in power the country saw the only relatively stable phase of state-building in the history of independent Congo (Young & Turner, 1985, pp. 396-397). He centralized the state and took a number of measures to reinforce it. He reduced the number of provinces from 21 to 9 and suppressed their autonomy, thereby significantly reducing the power of local networks (Putzel, et al., 2008, p. v). Mobutu also set out to build a modern public administration that depended on the centre, ensuring that officials did not serve in their own territories of origin. While there was some effort to maintain ethnic balance in appointments, those who held office served as officials of the Congo and not of their locality (Putzel et al. 2008 p. v). This was intended to reduce patrimonialism (at least the one that was outside Mobutu's control) and tribalism and to create a strong sense of national unity. During these early years of Mobutu's rule, social services to the population expanded and the country reached a 95 % rate of vaccination against childhood diseases (Putzel et al, 2008 pp. v-vi). Inflation was halted and real wages went up (Young, 1978, p. 170). During this period the administration also underwent a massive expansion (Hesselbein, 2007 p. 30).

It would be a mistake though to believe that Mobuto did this for the sole benefit of the country. From a political economy perspective, Mobutu was in the process of constructing a centralized system of patronage, which would allow the state to

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<sup>34</sup> For the philosopher Thomas Hobbes, the state of nature is characterized by the "war of every man against every man," a constant and violent condition of competition in which each individual has a natural right to everything, regardless of the interests of others.

capture rents.<sup>35</sup> As the head of state, he was the one profiting from the system he set up. The rents captured by the state were controlled by Mobutu himself, who used them to strengthen his grip on power. He nationalised the former Belgian Union Minière (the country's largest Mining company) in 1967 and created Gecamines which controlled the most important export earners, cobalt and copper (Putzel et al., 2008 p. v; Englebert, 2006 p. 58). Private avenues for wealth accumulation were progressively restricted as control of the economy by the state increased. As a result, all wealth soon became dependent on access to the state which further increased Mobutu's power (Englebert, 2006, p. 58).

In the early 1970s Mobutu started the so-called 'authenticité' process, which was an attempt to recover a sense of African identity and pride crushed by the colonial experience (Wrong, 2001 p. 94). As part of this process, Congo was renamed Zaire, and Christian names were banned and replaced by African names and even Christmas was abandoned (Callaghy, 1984, pp. 304–305). Symbols of the state, such as the flag and the national anthem were changed and roads and squares named after Belgians were renamed. Titles such as Madame and Monsieur were replaced by Citoyen and Citoyenne and western suits were forbidden and replaced by a high-collared jacket called abacost that Mobutu found inspiration for during his trip to China in 1973 (Braeckman, 1992, p. 172; Wrong, 2001, p. 95). As Wrong notes, at least part of the process of 'authenticité' worked and it left Congolese with a sense of uniqueness and a feeling that they were citizens of one vast central African nation with its own, very distinct identity (Wrong, 2001 p. 95). It also gave them a certain pride in being Congolese which is still notable today.

The stability, however, came with a high price. In essence, Mobutu pacified Congo at the cost of its very plural nature. He banned all political parties except his own, the 'Mouvement Populaire de la Révolution' (MPR); political opponents were executed, repressed or co-opted; and trade unions and student groups were incorporated into the MPR (Englebert, 2006, p. 58; Callaghy, 1984, p. 282).

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<sup>35</sup> State capture occurs when the ruling elite and/or powerful businessmen manipulate policy formation and influence the emerging rules of the game (including laws and economic regulations) to their own advantage.

### Zaïrianisation and the decline of the state (1973-1990)

From the mid-1970s, Mobutu progressively transformed the country into an absolute monarchy (Braeckman, 1992, pp. 137–138). In 1973 he began the so-called 'Zaïrianisation' of the economy, under which Mobutu nationalised nearly all foreign-owned businesses and plantations and handed them over to friends and family members (Englebert, 2006 p. 55; Devlin, 2008 p. 264-265). The 'Zaïrianisation' was catastrophic for the economy. Many of the new owners were neither interested nor qualified to operate them, and in 1975 and 1976 GDP declined by 5% each year (Young, 1978 p. 172-176; Englebert, 2006 p. 55). The economic down-turn was also compounded by the dramatic fall of copper prices in 1974 (Young, 1978 p. 171). In the 1980s, the mobilization and redistribution capacity of the Zairian state apparatus was further reduced due to the enduring economic crisis, hyperinflation and economic mismanagement (Putzel et al., 2008). Despite this, Mobutu managed to maintain control over the country, in part, by reaffirming his status as uncontested negotiating partner of the Western world. During the Cold War era aid was distributed according to allegiance and Mobutu's anti-Soviet stance provided him with massive support from mainly the United States, Belgium and France. These countries also used their influence in the World Bank and the IMF to ensure that these institutions were providing loans to the country (Lemarchand, 2009, p. 218; Wrong, 2001, pp. 203–205). Between the start of the economic crisis and Mobutu's departure in 1997 the country received a total of 9.3 billion USD in foreign aid (Wrong, 2001 p. 196) and accumulated foreign debt of around 14 billion USD (Ndikumana & Boyce, 1998, p. 195). At the same time, most Congolese saw their living standards decline: the UN estimates that by the 1980s 70% of the population lived in absolute poverty (Ndikumana & Boyce, 1998, p. 195).

Mobutu's three main backers had other motives too. The USA, for example, needed Zaïre's bases to support the US-backed rebels in Angola with weapons (Wrong, 2001, p. 202). The French were keen to keep an influence in Africa, and Congo, as the second largest francophone country after France, was considered to be of key importance (Ndikumana & Boyce, 1998 p. 210; Nzongola-Ntalaja, 2002 p. 162). French foreign policy in Africa was guided by the so-called 'Chasse gardée' policy, which meant that countries in Africa could rely on the protection

of France as long as they kept friendly relations with the country. This policy allowed France to punch above its weight in the international arena (Young, 1978 p. 181; Wrong, 2001 p. 202, Turner, 2013 p. 31). Belgium was keen to keep its foot in its former colony and to protect its investments (Wrong, 2001 p. 203; Turner, 2013, chapter 1).

It would, be a mistake though to believe that Mobutu was just a puppet of the West. On the contrary, Mobutu exercised considerable agency in his relationship with foreign donors, and he excelled in the game of playing the donors. As one American diplomat recalled *“he played us, and his environment, like a Stradivarius”* (Wrong, 2001 p. 204). His independence vis-à-vis the donors can be noted, for example, in his admiration for China and his rejection of Israel in the security council, both of which can't have pleased the USA (Young, 1978, pp. 171 & 184; Young & Turner, 1985, pp. 372–373). He was also skilled in exploiting the divisions of his external supporters such as France versus Belgium and Belgium versus USA (Young, 1978 p. 177; Gibbs, 1991, p. 161). Knowing that his regime depended on external resources, Mobutu spent significant sums on press relations, funding well-placed political ‘friends’ and lobbyists in the key Western capitals to ensure continued support (Wrong, 2001 p. 199). The former French president Valéry Giscard d’Estaing was one beneficiary of Mobutu’s generosity; d’Estaing’s son and other relatives had several business interests in the country (Young & Turner, 1985, pp. 374–375; Wrong, 2001 p. 199). Construction projects involving businesses controlled by relatives of d’Estaing accounted for nearly one-third of Zaire's foreign debt in the early 1980s (Ndikumana & Boyce, 1998 p. 212). Mobutu also had close ties with the Belgian executive director to the World Bank and IMF, Mr. Jacques de Groote, who allegedly leaked classified documents to Mobutu and put pressure on senior officials in the financial institutions to guarantee loans to the Congolese state (Ndikumana & Boyce, 1998 p. 212).

Mobutu managed to transform the very weakness of Congo into an asset for the survival of his regime by playing on the West’s fear of what would happen if he was no longer in power; telling them ‘après moi le déluge’ (after me there will be chaos). With the memories of the chaotic years after independence still fresh, donors worried what would happen to the country after Mobutu. This worry was

compounded by Mobutu's suppression of the opposition, which effectively hindered its emergence, which led donors to question whether there was anyone that could actually take over the leadership should Mobutu fall (Young and Turner, 1985 p. 395; Wrong, 2001 p. 203).<sup>36</sup> Hence, the donors always came to his rescue, whether in the form of military support to squeeze rebel groups or ensuring the re-scheduling of loans by the multilateral institutions (Young and Turner, 1985 p. 395) despite the fact that it was no secret that funding never benefitted the population. A German banker, Mr. Erwin Blumenthal, sent by IMF to work as an adviser at the Congolese Central Bank in Kinshasa, reported back in frustration that there was no possibility that the numerous creditors would recover their funds and that the root cause which destroyed all possibilities of the recovery was "the corruption of the ruling group" (Young & Turner, 1985, p. 385). Diplomats also reported chilling meetings where Mobutu more or less covertly threatened them, causing some former American diplomats reportedly to say "*we know he is evil, but who else is there?*" (Wrong, 2001 p. 203). Thus, Mobutu effectively inserted fears amongst his backers, thereby enabling him to continue to extract resources despite growing discontent.

While external sources were key for Mobutu's rule, he also emptied the state's resources. In most patrimonial systems the boundary between the treasury and the President's accounts tends to be blurred. However, in Congo the treasury's main function was to fill the President's coffers (Trefon & Smis, 2002, p. 380). Mobutu used state-owned enterprises such as Gécamines and the Central Bank as his private properties, which further undermined the Congolese economy. Part of the money was used for paying for his extravagant life-style for which he became infamous (Young and Turner, 1985 p. 400). He built a copy of Versailles in his native village in the middle of the jungle in Equateur, and his family went on shopping trips to Paris with suitcases filled with dollars (Wrong, 2001, chapter 10). However, his predatory behaviour was not simply for personal self-enrichment but was also for the buying of national and international sources of support that kept him in power (Wrong, 2001; Ndikumana & Boyce, 1998 p. 215).

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<sup>36</sup> The co-option of the opposition and the use of violence to suppress opponents is part of the political culture in Congo.

The table below details the degree to which government expenditures became privatized during Mobutu's regime. In the early 1970s a fair amount of funding went to social services, whereas in 1990 its share of the national budget was down to 2%. Investments in agriculture declined, which led to a situation where the country, which used to be an exporter of agricultural products, now doesn't grow enough to meet the basic needs of its population (Trefon, 2016, p. 42).<sup>37</sup>

Table 2: Privatization of Government Expenditures (Reno, 1997, p. 43)

	President	Social Services	Agriculture
1972	28%	17.5%	29.3%
1980	33%	11%	42%
1990	80%	2%	11%

In this process of decline, state agencies become involuted mechanisms, mainly preoccupied with their own reproduction. In order to survive civil servants, including the police, health workers and other government officials, preyed on the population. A bribe accompanied almost every interaction with the state, whether when enrolling a child in school, passing a police roadblock or visiting a public clinic (Young and Turner, 1985 pp. 399-400). Corruption became during this period deeply engrained in the political culture of the country. The whole state apparatus started to disintegrate in the 1980s when it became almost totally deprived of funding due to the economic crisis in the country. A 'debrouillez-vous' mentality started to govern relationships between the state and the people. The expression, which means 'fend for yourself', was something that Mobutu used in a speech to the military when the soldiers had started to complain about not getting paid. He asked them what their problem was, saying '*you have guns, you don't need a salary*' so they should be able to 'manage on their own' (Stearns, 2010 p. 116). They inferred this gave them official authorisation to steal a little bit from the people. Congolese often refer to 'Article 15' in the constitution, a fictitious clause in a non-existent constitution that calls for the population to do anything

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<sup>37</sup> In the end of 1950 export of agricultural products amounted to 39% of total exports. Today it represents almost zero (Trefon, 2016, p. 42).

they need to survive and which became the modus operandi for every Congolese (ibid).

Domestically, Mobutu continued to artfully exploit division in the opposition, co-opting dissidents by, for example, offering them lucrative posts within the government and, when nothing else helped, occasionally unleashing the army (Young, 1978 p. 177; Dunn 2003 pp. 139-140). He also used his secret police to arrest dissidents (Nzongola-Ntalaja, 2002, p. 156).

With the end of the Cold War Mobutu became less relevant for his foreign backers, who pushed Mobutu to move towards democracy. Feeling the pressure, in 1990 Mobutu convened a National Conference on democracy that involved the Catholic Church and opposition members. He promised elections, multi-partyism and revision of the constitution, but in the end delivered very little (Braeckman, 1992 p. 13; Dunn, 2003 pp. 139-140), again proving himself to be a master of co-opting opponents to his rule.

#### Further erosion of the state, the fall of Mobutu and two wars (1990-2002)

The 1990s was a period of unravelling and the eventual collapse of the Congolese state. With the end of the Cold War, maintaining African clients became less necessary for the West. Hence, when Mobutu brutally killed pro-democracy students in Lubumbashi, Mobutu's former backers, the USA, Belgium, France and the Multilateral Banks, withdrew support to the regime (Braeckman, 1992 pp. 13-27). Foreign aid to Congo fell by 41% between 1989 and 1990 (Marriage, 2010, p. 358). This made it almost impossible for Mobutu to sustain the networks that had helped to keep him in power. The economy was in free fall, and soldiers that had gone without pay started violent riots in various cities in 1991 and yet again in 1993 (de Villers & Omasombo Tshonda, 2004, pp. 142–147). The riots destroyed much of what had been left of formal industries and business enterprises in the country (Nzongola-Ntalaja, 2002, p. 151). To stay in power Mobutu started to play off different ethnic groups against each other which had disastrous consequences, especially in the eastern parts of the country (ibid p. 172). Inciting ethnic violence is, according to Reno, a typical strategy by predatory states in response to threats (Reno, 2015, p. 739).



Another factor contributing to the fall of Mobutu was that he had become an enemy to many of Congo's nine neighbours by providing a free haven to various foreign rebel groups, such as the Hutu militias known as Interahamwe, who were behind the genocide in Rwanda in 1994. The Interahamwe were hiding among the refugees in the camps that were set up by the international community at the Congolese side of the border with Rwanda to deal with the refugee crisis after the genocide. From the camps the Interahamwe launched attacks against the new Tutsi-dominated government in Rwanda (Weiss and Tatiyana, 2004 p. 122). President Kagame of Rwanda repeatedly asked the international community to disarm the Hutu in the refugee camps but nothing concrete was done (ibid). Kagame lost patience and in October 1996 Rwanda attacked the camps. Rwanda, together with Uganda, also decided to get rid of Mobutu for good, thereby starting the first war in Congo (1996-1997). To avoid being seen as aggressors, the Rwandans and the Ugandans sponsored the creation of an alliance of small and obscure exiled anti-Mobutu Congolese revolutionary groups (Weiss and Tatiyana, 2004 p. 23). Laurent Kabila, a rebel leader from Katanga, was chosen as the group's leader.<sup>38</sup> The Congolese army was so weak that it hardly put up any resistance. As a consequence, it took the rebel group only six months to walk between the eastern parts of Congo to Kinshasa in the Western part of the country (3,551 km in a country with hardly any roads). In May 1997, Mobutu fled the country, and Laurent Kabila became the President of Congo. Hence, in an ironic twist, a person that many Congolese still see as a real patriot was actually put in place by its much smaller neighbour, Rwanda.

Laurent Kabila was initially seen as a puppet of foreign interests. He had not been in Kinshasa for decades and had no experience of governing. He was surrounded by advisors from Rwanda and he felt alienated in the capital (Stearns, 2010 pp. 163-166 & 173). Almost immediately upon taking office, he managed to upset the international community, not only by his refusal to allow an international investigation of the alleged massacres of the Rwandan-backed rebellion on Congolese soil but also by his anti-West rhetoric and left-leaning ideology (Prunier, 2010, pp. 159–160; Reyntjens, 2010, p. 165; Weiss & Carayannis, 2004,

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<sup>38</sup> For more information regarding how Laurent Kabila was chosen by the Rwandans to be the official leader of the rebellion, see Stearns account in his book 'Dancing in the glory of the Monster' (2010).

p. 124). Consequently, when the World Bank convened a donors' meeting in Brussels in December 1997, Kabila asked for 575 million USD for help to rebuild the country but received a mere 32 million USD (Stearns, 2010 p. 174). To add insult, the World Bank also informed the new government that they owed 14 billion USD in debts that Mobutu had accumulated over the years (Stearns, 2010 pp. 174-175).

The second Congo war (1998-2002) started less than a year after Laurent Kabila had been put in power and was essentially a continuation of the first one. The contributing factor was that Laurent Kabila decided to turn his back on his foreign backers and asked them to leave. This was a fatal, but almost inevitable, move. The Congolese were tired of the condescending and harsh behaviour of the Rwandan soldiers, and Laurent Kabila's legitimacy was severely undermined (Reyntjens, 2010, pp. 166–169, Stearns, 2011 pp. 193-194). The request, however, unsurprisingly infuriated Rwanda and Uganda who decided to overthrow Laurent Kabila. They almost succeeded. It was only at the last moment, when the Rwandans were just outside Kinshasa, that Angola and Zimbabwe came to Laurent Kabila's rescue (Reyntjens, 2010, pp. 196-198). The situation led to what is usually described as Africa's first World War. No less than nine different countries were fighting on Congolese soil during 1998 - 2002, some on the side of Kabila and some against him. While the first Congolese war that had removed Mobutu was a war of grievance by neighbouring countries who wanted to stop Mobutu's interference in their countries, this war was largely about greed and access to resources (Lemarchand, 2009, pp. 254–255; Stearns, 2011, p. 297). The consequences for the population were immense; around 5 million people are estimated to have died as a result of the war.<sup>39</sup> A large part of the country came under the influence of Rwandan and Ugandan-backed rebel movements. A number of peace initiatives were launched but none succeeded. The stalemate was suddenly broken in 2001 when Laurent Kabila was killed by his bodyguard; one of the child soldiers that had marched together with Kabila from eastern Congo to Kinshasa in 1997 (Turner, 2013 p. 58). The child soldier was immediately killed, and the motive behind the murder is yet to be established.

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<sup>39</sup> An estimated 5.4 million died because of the conflict between 1998-2007 (IRC, 2007, p. 16). This data has been disputed by the Human Security Project which estimates the figure to be 1/3 of the IRC estimates (World Bank, 2013, p. 22).

Some, like the French political scientists Gérard Prunier and René Lemarchand, suspect that Angola was behind it, while others believe it was Rwanda. Many also suspect that the USA was involved in one way or another, at least by not objecting to the assassination.

### Transition and the rise of Joseph Kabila (2002-2006)

A small circle around Laurent Kabila decided that his son, Joseph Kabila, would take over from his father. Joseph was quite different from his father. While his father had been authoritarian and confrontational, Joseph was shy and reclusive, rarely giving speeches, and he struggled to be accepted by the population (Stearns, 2011).

The small group of people that had decided to select Joseph Kabila as his father's replacement probably calculated that he would be easily manipulated by them. However, the weak and introverted son turned out to be much smarter and more independent than anybody had suspected. Joseph Kabila also revised many of his father's decisions (Stearns, 2011 pp. 308-

#### Textbox 1: Kabila the choice of the West?

Kabila is commonly assumed to have been the West's candidate in both the 2006 and the 2011 elections. These suspicions are not unfounded. In 2006 Kabila was popular amongst Western governments due to his willingness to embrace liberal change and to improve the country's relationship with the West. Kabila received strong support from CIAT which gave him the reputation of being 'the candidate of the White man' (Reyntjens, 2009, p. 272). By 2011 Kabila had to a certain degree fallen into disgrace, but he was by some of the main donors still seen as a safer and more stable option than any of the opposition leaders. Belgium, US and to a certain extent France, put a great emphasis on timely, stable and sufficiently credible elections at the cost of a legitimate process. Monusco, headed by an American diplomat, Roger Meece, took a passive stance and sided with the government on the need to arrange the elections on time. This despite the many question marks that existed on for example the voter registration process. Few embassies spoke up against threats against activists and journalists. The Western embassies also failed to understand Tshisekedi, the leader of UDPS, who was seen as stubborn and obstructive. Hence, Congo's foreign partners are seen to have heavily invested in legitimizing Joseph Kabila, without fully taking the longer-term implications into account (Trefon, 2011, p. 24).

309). Within a year of his nomination he had gotten rid of almost everybody who had put him in power (ibid, p. 314). In his first address to the nation, just days after he had laid his father to rest, he announced a sea change in foreign policy. Bush had just been elected in the United States and Kabila's message was directed at him: *'Without beating around the bush, I recognize there has been mutual misunderstanding with the former [US] administration. The DRC intends to normalise bilateral relations with the new administration'* (Stearns 2001 p. 312).

He also declared himself 'firmly resolved to improve cooperation with our main partners of the European Union, especially France, and Belgium with which we share historical ties' (Prunier, 2010, p. 258). At the same time, he promised to liberalize the economy, and - most importantly - immediately commit to resuscitating the peace process. Several months later he allowed political parties to operate again.

Where his father had governed by left-leaning ideology, Joseph was in the beginning a pragmatist (Stearns, 2011 p. 312). It is easy to understand why the international community initially warmed to him. One might ask what Kabila had to gain from allying himself with the western donors but considering that the country was broke and having no real powerbase on his own, his best option was to become friendly with the West (Stearns, 2011 p. 313). Joseph Kabila moved rapidly ahead with peace talks, which had been stalled by his father (Lemarchand, 2009, p. 246). In 2002 a peace-agreement was signed in Sun City, South Africa. This initiated the transition period that led-up to the election of a democratic government in 2006. The transitional government was led by Joseph Kabila, together with four vice-presidents, two from the main rebel groups, one from Kabila's entourage and one from the unarmed opposition (Reybrouck, 2012 p. 449). International development assistance to the country increased substantially after the peace agreement.

The peace agreement also established the so-called CIAT (Comité International d'Accompagnement à la Transition), which was made up of members from the international community,<sup>40</sup> and they were, to a large extent, managing the country during the transition period. What made the arrangement with CIAT special is that it wasn't an external advisory board, but a formal institution during the transition (Reybrouck, 2012 pp. 449-450). It was like a version of controlled sovereignty, which at points led to deep tensions between the CIAT and the 1+4 government (ibid, p. 450). It was, to a large extent, CIAT and UN Peacekeeping Mission (Monuc)<sup>41</sup> that kept the transition process afloat through the application of pressure, and that assisted the government to arrange the first democratic

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<sup>40</sup> The CIAT consisted of the Ambassadors for the five permanent members in the UN Security Council together with the Ambassadors from Belgium, Canada, Angola, Gabon, Zambia and South Africa as well as representatives from the African Union, EU and Monuc (Reybrouck, 2012 p. 450).

<sup>41</sup> Mission de l'Organisation de Nations Unies en République Démocratique du Congo.

election since 1960. The elections, held in 2006, were by and large seen as a major success for Congo and for the international community. Kabila won the runoff with 58% compared to Jean-Paul Bemba's 42% (one of the vice-Presidents who represented the rebel groups). The votes were regionally divided with Kabila winning in the East and his native Katanga province, whereas he lost in Kinshasa where many voters saw Kabila as the candidate of the international community (Reybrouck, 2012 pp. 481-482).

There was a certain kind of optimism after the election had been held, and aid continued to flow into the country. Numerous reform projects were launched in areas such as Public Financial Management, Security Sector Reforms and Justice Reforms. Monuc, which in 2010 changed name to Monusco,<sup>42</sup> continued its work in the East. From a diplomatic point of view, however, Congo became less of a priority once the elections in 2006 were held, and President Kabila reduced contact with the international community (Davis, 2009, p. 28).

#### Congo under Kabila – from hope to disappointment (2006-2016)

It didn't take long before Kabila lost his allure as being part of a 'new type' of African leader. Reforms stalled, he failed to diversify the economy and, most importantly, he didn't succeed in securing the situation in the East where he failed to consolidate his power (Stearns et al., 2013, p. 31). Instead the situation can best be described as what Berwouit has termed 'Congo's violent Peace' (Berwouit, 2017).

In 2011, the country's held its second democratic elections. In contrast to 2006, Congo managed the arrangements, although with support from Monusco and financing from the international community. Mr. Bemba, Kabila's main rival in the 2006 elections, was detained at the International Criminal Court (ICC) in The Hague during the 2011 polls, on trial for war crimes and crimes against humanity committed by his troops in the Central African Republic (CAR). President Kabila's main electoral threat came from Etienne Tshisekedi of the Union Pour la Democratie et le Progres Social (UDPS). Tshisekedi was a major threat to Kabila, considering that many Congolese saw him as the only one that had stood up

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<sup>42</sup> United Nations Organization Stabilization Mission in the Democratic Republic of the Congo.

against Mobutu.<sup>43</sup> Kabila was, however, greatly aided by an earlier change in the constitution reducing the elections from two rounds to one. For the divided opposition this was a major set-back as they were not able to unite behind one candidate. Kabila had allegedly bribed the whole Parliament to get the change through and the international community had, according to one western diplomat, been conspicuously silent about the changes. Hence, despite being increasingly unpopular, Kabila and his party managed to win the elections. The elections were, however, in general not considered to be free and fair. The powerful Catholic Church, which had deployed thousands of electoral observers in the country, declared that the elections 'do not conform either to truth or to justice' and the Carter Center did the same (Carter Center, 2011). The USA labelled the elections as 'seriously flawed', adding however that it was unclear whether the irregularities had been enough to change the outcome (Turner, 2013 p. 20). Kabila was sworn in as President, but the legitimacy of his regime was severely tarnished. Of the neighbouring states, Zimbabwe's Robert Mugabe was the only leader to attend the inauguration ceremony.

Foreign interference in the East continued and there was a proliferation of armed groups. It is estimated that in North Kivu alone there are currently over 70 rebel groups (Vogel & Musamba, 2016, p. 1).<sup>44</sup> In 2012 the Rwandan and Ugandan backed rebel group M-23 took over part of eastern Congo, including Goma, the provincial capital of North Kivu. A peace agreement was signed in Addis Ababa on 24 February 2013. Other groups are still active, such as the Ugandan ADF (probably in close collaboration with part of the Congolese army) which is causing mayhem in the Beni area. The former intrahambwe in FDLR are still active, though weakened due to a split in the group. Conflicts have also spread to other parts of the country, such as Kasaï which previously have been considered rather stable.

Although there were some improvements, Congo under Kabila's leadership continued to perform weakly. The Congolese economy continues to be highly dependent on the mining industry, and 95% of Congo's export earnings come from oil and minerals, the vast majority from two main commodities, copper and

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<sup>43</sup> Tshisekedi had been the Prime Minister for a short time after the national dialogue in 1990.

<sup>44</sup> Since the time of this writing the number has continued to increase.

cobalt (Global Witness, 2017, p. 7), which makes the country vulnerable to price fluctuations. In 2015 the copper price on global markets fell dramatically, forcing the government to cut the national budget by 22% (ibid, p. 32). By May 2017 the Congolese franc had lost half of its value compared to the year before and inflation leapt to over 25 percent in 2016, with severe consequences for the population which saw prices on food rise considerably (ibid).

Further, the country has often ranked among the lowest in UNDP's Human Development Index: in 2017 it was ranked 176 out of 188 countries<sup>45</sup> (UNDP, 2016, pp. 224–225). Between 2010 and 2015 the economy grew rapidly under Matata Ponyo, who was the Minister of Finance between 2010 and 2012, before he became Prime Minister in April 2012 (with continued responsibilities for the Finance Minister post). He managed to stabilise inflation, which had been rampant during earlier years. Thanks to this he was popular amongst donors. He was, however, forced to resign in 2016 as part of an African Union backed national dialogue framework agreement which specified that an opposition leader take the position of Prime Minister. The growth, however, has only led to very modest reduction in poverty rates. The latest available figures from the World Bank estimates that 77% of the population lives under the poverty line of 1.90 USD per day (wdi.worldbank.org).

### 3.3. Political culture, power and the functioning of the state administration

It is worth commenting on Congolese political culture, and how political power and the state administration operate in Congo. Many states in Africa are so-called neo-patrimonial states, where the governments use state resources to secure the loyalty of clients in the general population. It has generally been believed that neo-patrimonialism is contradictory to development. However, more recent research shows that neo-patrimonial states can indeed be developmental and that it is possible for external actors to work with the state and achieve outcomes that are good for the country at large. The best examples of these so-called developmental states are Rwanda and Ethiopia where the political elite have

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<sup>45</sup> Compiled on the basis of estimates from 2016.

centralized rent-seeking and used it to invest in services for the population (Booth, Kelsall, 2013). Not all neo-patrimonial states are developmental though, and Congo belongs to the category of neo-patrimonial states that are predatory, and non-conducive to development.

As noted by Reno, predatory states usually are managed in a highly personal and informal way (Reno, 2015, pp. 730–731). This has several benefits for the ruler himself and might be vital for his survival, but it is not conducive to development. Joseph Kabila prefers informal networks and parallel command systems, as it gives him ‘greater leeway to rule’ (Stearns, 2010 pp. 321-322). For example, instead of passing through his Minister of Interior, Kabila will call governors or military commanders directly. Instead of authorizing increases to official salaries for civil servants: *‘he allows many to scrape by on salaries of less than 100 USD a month, only to send them envelopes of several thousand dollars at his discretion to keep them happy’* (Stearns, 2010 pp. 321-322). This parallel management weakens institutions and makes officials directly dependent on the presidency. The inner circle of Kabila consists of some of his ministers and military leaders, but to know who is among the most powerful is almost impossible for outside observers. Kabila is secretive, gives few speeches and prefers to stay at his farm outside Kinshasa. He allegedly assigns issue-based responsibilities to those close to him and deals with them bilaterally. No one apart from President Kabila is said to have an overall overview of presidential affairs and all major decisions goes through the President. This secrecy is a powerful cultural reality and political strategy in Congo, and there is a belief that really effective power is exercised in secret (Trefon, 2011 p. 113).<sup>46</sup> This secrecy and figuring out who knows what is a crucial element in Congolese politics (ibid). It also keeps the international community occupied, with the diplomats constantly trying to figure out who is in control of decision-making as formal power does not always equal real power. This makes it difficult for the donors to know whom to engage with as the ministers that they would normally deal with might not be the real decision-makers.

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<sup>46</sup> It is said that many politicians belong to secret societies.



This secrecy also leads to insecurity, not only for the population, but also for the elite itself, who never fully knows who is in and who is out, and how long they will hold on to power. This fuels corruption as ‘people in power seek to accumulate resources as rapidly as possible from those who occupy contextually inferior positions in the social hierarchy’ (Schatzberg, 1988, p. 3). Hence, whilst able, they extract whatever they can because they know a fall from grace might be imminent (*ibid*).

The political culture of secrecy is also noted in how information is being used. Congolese society and politics are always full of rumours, some more fanciful than others, and the distinction between what is true from what is not true is not always made (Friedman, 1994, p. 101; Trefon, 2011, Chapter 6). Disinformation and manipulation are often used as a political strategy, and it is sometimes used to discredit the donors, such as rumours about aid workers spreading Ebola in North Kivu (The Economist, 2019, pp. 42–43; The Economist Intelligence Unit, 2019, p. 15).

As under Mobutu, the central and local administrations are weak and dysfunctional. However, it would be a mistake to assume that they are non-existent. As work by amongst others Trefon and Englebert shows, the Congolese state and its institutions do indeed exist, although they keep operating according to their own logic (Englebert, 2003; Trefon, 2009). The presence of the state is most evidently manifest in cities and towns, but it also reaches the rural areas (Trefon, 2009 p. 10). Civil servants are basically left to fend for themselves as their salaries are either low or non-existent, and as we saw earlier in this chapter a ‘*debrouillez-vous*’ mentality (i.e. manage on your own) has become engrained in the culture.<sup>47</sup> Many resort to preying on the population in order to make a living. Policemen talk about “taking on an angry face” when they go to work in order to extract as much money as they possible can (interview, Congolese professor in Kinshasa, 2016-11-26). An unpublished study by Titeca and Sanchez de la Sierra shows that the police make 80% of their income from extortion (The Economist, 2018d). A large part of it needs to be circulated upwards to their bosses. If they don’t deliver the weekly envelope with money they can be sure to be moved to

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<sup>47</sup> See for example, Stearns 2011, for how the ‘*debrouillez-vous*’ mentality has affected the mentality of civil servants in Congo.

less profitable corners of the town (Baaz & Olsson, 2011). Health workers steal medicines that they then sell at private clinics and teachers turn children away from school if their parents fail to pay the school-fees, despite the constitution clearly stating that education should be provided free of charge. Hence, predation and corruption have become dominant characteristics in Congolese political culture leading to what Diamond (see chapter 1) referred to as a predatory society where every transaction is used to someone's immediate advantage. To change a system that is so stuck against collective action both within the elite, but also within the administration will take time and a lot of efforts.

In these and many other aspects the Congo hasn't changed much since the Mobutu era. Formal jobs and business continue to be rare and employs less than 10% of the population according to World Bank data from 2016 ([wdi.worldbank.org](http://wdi.worldbank.org)). Consequently, it is a commonly held view among the population that the only avenue to power and wealth is the state (Trefon, 2011, chapter 6).

In a system that has become so ingrained in a predatory form of patrimonialism it is hard for both the political elite and the population at large to find forms of collective action. A trait in Congolese politics from Mobutu to Kabila is the relative easiness with which the ruling party has managed to co-opt the opposition, sometime by fear, but often with the promise of lucrative posts within the government. This co-opting is facilitated by the fact that opposition political parties for the most part, are dominated by individual politicians without a clear, and ideologically driven, political agenda (Kelsall, 2016, pp. 7–8).

The government budget is very small. In 2015 the state's income was 5.8 billion USD but the actual budget execution was only 58.3% (Ministry of Budget). This low execution rate is in the same range every year and betrays both significant leakages on the revenue side and misallocation on the expenditure side. But not all budget posts are cut equally. The President's office and the Prime Minister usually spend more than 200% of their allocation, while sectors such as health and justice are routinely cut with around 50-70% (Ministry of Budget). This says a lot about the government's priorities. The budget situation for provincial and local levels of the administration is dire, and they receive almost nothing from the

central government, despite the fact that the provinces should receive 40% of the revenues they are generating for the state according to the constitution (Englebert, 2012, p. 43; Englebert & Mungongo, 2016, p. 8). This often deliberate miscalculation on the expenditure side is common in systems based on patron-client relationships, where the elite needs to get access to 'rents' in the economy to cement its internal relationships and buy the support of key constituencies (African Power and Politics Programme, 2012, p. 10). Consequently, ruling elites often resort to various kinds of off-budget transfers and informal sharing of rents (ibid).

Finally, I would like to raise that cultural factors have both direct and indirect impacts on how political systems evolve, and that technocratic top-down initiatives can't be viable without paying some attention to political culture, and how history and tradition are elements of the cultural reality that influence contemporary politics (Trefon, 2011, chapter 6). Knowledge about how political structures, power relations and historic legacies shape the motivations of different stakeholders and the behaviours within systems is important for donors to understand in order to facilitate reform processes (ibid). International experts, however well-intending, tend to neglect how culture can facilitate or hinder reform processes. There is often a lack of understanding that Congolese political actors sometimes operate 'in a world with a substantially different understanding of causality and causal forces than most Western social and political scientists possess' (Schatzberg, 1988). Obviously, in a place like Congo, and many other parts of Central Africa, where popular culture of witchcraft is pervasive it naturally also affects the political culture.<sup>48</sup> People are, for example, often accused of using witchcraft and fetishes for personal, political and financial gains and for protection against potential rivals. Witchcraft was, for example, an important part of the mystique surrounding the Mobutu regime. Hence, to explore the influence of

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<sup>48</sup> The belief in magic has a strong influence on people's lives and it influences politics as well. It can, for example, lead to people being afraid of investing in businesses as it might create jealousy and accusations of witchcraft. The large number of street children in Kinshasa is to a large extent related to witchcraft. Many of the children have been accused of witchcraft and have been thrown out of their homes or left voluntarily to avoid being subjected to exorcism. Hence, perceptions of witchcraft have a real impact on people's lives.

witchcraft is of relevance for the understanding of Congolese political culture. However, due to time constraints it is beyond the scope of this research.

To conclude, reforming the state from this starting point will not be easy. In the words of Stearns *“it will require tackling entrenched interests and mafia-like networks that operate the administration”* (Stearns 2010 p. 324). In doing so Kabila would risk offending powerful people, who could then try to challenge him (ibid). Hence, it is therefore perhaps not surprising that Kabila has chosen not to push for neutral, efficient state institutions, but rather to strengthen his own personal security and business networks (ibid). Thereby sustaining a predatory rule that is not conducive to development. For the donors the political culture of neo-patrimonialism, predation, secrecy and disinformation creates considerable obstacles also for the donors’ state-building agenda. A first step in this process is to get an in-depth understanding of Congolese politics and what reforms are feasible to achieve.

### 3.4. The current state of Congo – Heading towards a collapse?

Congo is in the midst of a severe political crisis.<sup>49</sup> President Kabila was obliged by the constitution to step down at the end of 2016. However, he has remained in power despite the protests of political opponents and mass demonstrations that have faced deadly suppression by Kabila’s forces (ICG, 2016; Human Rights Watch, 2017). On New Year’s eve 2016, a power-sharing agreement with the opposition was reached under the leadership of the Catholic Church (ICG, 2017, p. 1). The opposition faced a major disruption when Etienne Tshisekedi passed away in February 2017, and the fragile political truce fell apart in April 2017 when Kabila unilaterally appointed a Prime Minister (Mr. Bruno Tshibala, a dissident UDPS opposition leader) in an attempt to split and co-opt the opposition. During a visit to Kinshasa in October 2017 by the US Ambassador to the UN, Mrs. Nikki Haley, President Kabila promised that elections would be held by 23 December 2018. At the time of writing (September 2018) it remains unclear whether elections will be held or not. Kabila has in the past few years shown that he is willing to go to great lengths to remain in power. He has tried to change the

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<sup>49</sup> Since the time of this writing, elections have been taken place and Kabila is no longer the president.

electoral law in his favour, clamped down on peaceful protests, prosecuted political opponents and even decentralised the country in order to undermine the political power base of the former governor of Katanga, Mr. Moïse Katumbi (Berwouts, 2017a, pp. 154–156). There has been much speculation that he would appoint a so-called ‘Dauphin’, someone that would run for him (see for example Jeune Afrique, 2018a). There has also been speculation that Kabila would bend the rules, by having the Constitutional Court make a ruling that, due to the change to the constitution in 2011, the two-term period of the Presidency should be calculated from this election, and not from the 2006 elections. This interpretation would allow Kabila to stay another term in power. T-shirts with Mr. Kabila for President started to appear in Kinshasa in the summer of 2018, increasing the speculation that Kabila planned to run himself (The Economist, 2018a). On August 8<sup>th</sup>, Kabila finally announced that he would not stand in the election, and that the party’s candidate would be Mr. Shadary, the former Minister of Interior and currently the Secretariat of MPPR (The Economist, 2018b). He is seen as a loyalist to Kabila. President Kabila needs someone that he can trust as he is allegedly afraid of ending up in the ICC (Reid, 2018, p. 103). He has also invested a large amount of assets that he can’t take with him should he go into exile. Leaving the Presidency would put these investments in jeopardy and make himself and the close circle around him vulnerable to prosecution. Hence, the stakes are high.

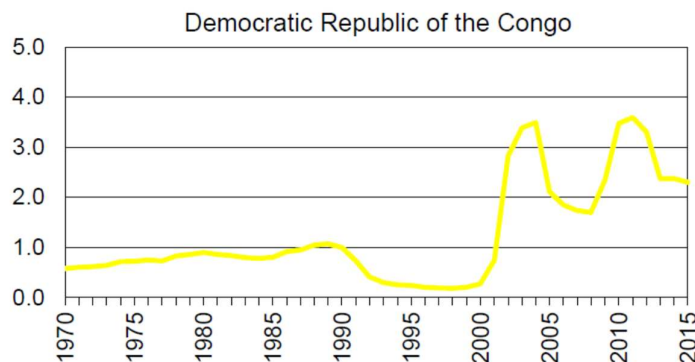
President Kabila’s efforts to cling to power have further distanced him from the international community. The EU and USA have issued sanctions against members linked to the regime and the electoral violence (Council of the EU, 2016, 2017; Human Rights Watch, 2017, p. 8). Their bank accounts have been confiscated and they are no longer allowed to travel to the USA and Europe (Council of the EU, 2016, 2017). Belgium has also decided to redirect part of its aid from Congolese institutions to humanitarian aid. The African Union and neighbouring countries have so far, albeit not openly, put significant pressure on President Kabila, but once he is no longer perceived as the one that can bring at least a certain degree of stability in the region they are likely to abandon him.

### 3.5. Contemporary development assistance to Congo

In the previous section I have shown how development aid was used to support Mobutu's 32-year rule and how instrumental it was for him to stay in power. But how important is aid today? And who are the donors?

In 2016, the Congo received nearly 2,1 Billion USD (OECD Statistics) in aid.<sup>50</sup> Due to the prolonged crisis in the east, Congo is one of the world's biggest recipients of humanitarian assistance and the UN has one of its biggest peace-keeping operations in the country, with around 18,000 uniformed staff members (UN Security Council, 2018, p. 10). As can be seen from the graph below, levels of aid to Congo were broadly constant from 1970 to early 1990 when the donors turned off the taps. Aid then increased significantly in the period from 2002 up to the elections in 2006. Immediately thereafter it fell before increasing again so that in 2010 it was at the level provided before 2006. Since then aid has remained more or less at the same level. The rise in 2012 is due to a significant amount of debt relief agreed upon that year. Given the widespread rhetoric of 'reform failure' and 'lack of political will', as well as the difficulty of the aid environment, one might assume that development aid will begin to go down. However, despite some minor decreases during the last few years, there are so far few indicators of drastic cuts in aid.

Figure 2: Trends in aid to Congo, USD Billion, 2015 prices and exchange rates, 3-year average net ODA receipts.



<sup>50</sup> The figure refers to official development flows 2015, OECD Development Statistic System accessed 2018-07-01.

To get a sense of the importance of aid, the amount of aid needs to be put in relation to the government's budget for 2016 which was 4 530 million USD (Ministry of Budget).<sup>51</sup> As highlighted by De Herdt & Poncelet (2011), the flows of aid, despite being rather low in per capita terms, are of such magnitude that the political economy is profoundly affected, creating important stakes around its usage, with potential implications for power relations between domestic and international actors (De Herdt & Poncelet, 2011 p. 13). How important aid is depends on the sector and at which level. Some, like the Ministry of Mining, have access to other resources whereas, for example, the Ministry of Planning and the Ministry of Gender have less access to lucrative deals and are hence more dependent on development aid (interview Head of Cooperation, Kinshasa, 2014-11-21).

How much is this compared to other African states? In the following two graphs we can see that on average 2014-2016 Congo was the sixth largest recipient on the continent.

Table 3: Top ten ODA recipients in Africa.<sup>52</sup>

	2014	2015	2016	3-year average	% of all recipients
1 Ethiopia	3 584	3 234	4 074	<b>3 630</b>	7%
2 Egypt	3 538	2 499	2 130	<b>2 722</b>	5%
3 Tanzania	2 651	2 582	2 318	<b>2 517</b>	5%
4 Nigeria	2 479	2 432	2 501	<b>2 470</b>	5%
5 Kenya	2 661	2 464	2 189	<b>2 438</b>	5%
6 Democratic Republic of the Congo	2 400	2 599	2 107	<b>2 369</b>	5%
7 Morocco	2 240	1 481	1 992	<b>1 905</b>	4%
8 Mozambique	2 106	1 815	1 531	<b>1 817</b>	4%
9 South Sudan	1 964	1 675	1 590	<b>1 743</b>	3%
10 Uganda	1 634	1 628	1 757	<b>1 673</b>	3%
Other recipients	28 827	28 635	27 764	<b>28 409</b>	55%
<b>Total ODA recipients</b>	<b>54 083</b>	<b>51 044</b>	<b>49 954</b>	<b>51 694</b>	<b>100%</b>

If we look at aid per capita we find that Congo received 27 USD per capita in 2016 whereas its small neighbouring countries of Rwanda received 96 USD per capita

<sup>51</sup> This was the part of the budget that got executed. The initial budget was higher.

<sup>52</sup> Source: OECD data 2018.

the same year and Uganda received 42 USD per capita (World Bank data base).<sup>53</sup>

Despite receiving substantial donor funding, Congo is far from being a ‘donor darling’. The level of trust between donors and the government is low and, as a consequence, the country doesn't receive general or sector budget support. Donors generally implement their programmes through mechanisms outside of the government's systems although some, such as the World Bank, have advisors and project implementation units embedded within ministries. The lack of trust also manifests itself in the implementation of the New Deal as we saw in chapter 1, where none of the donors stepped up to take the co-lead role together with the government to support its implementation.

The international reporting from Congo has, to a large extent, focused on the conflicts in the eastern Congo, and so has the development assistance. As a consequence, the eastern parts of the country receive the bulk of aid, whereas other parts receive considerably less despite often being poorer and having worse human development indicators.

### *3.5.1 Congo's natural resources make the elite less dependent on western aid*

Congo's natural resources, and especially the mining industry enable the elite to stay in power and contribute to making the political elite independent of the donors. Hence, it is worth mentioning some recent developments in the sector. As we saw in the previous section, the mining industry was important for Mobutu's ability to stay in power and it continues to be of monumental importance for Congo's economy as well as for President Kabila himself. Kabila and his family are deeply involved in business operations in the country; from shady deals in the mining sector, to the telephone company industries, banking and land ownership (Congo Research Group, 2017).

Corruption in the mining sector is rampant and, just like under Mobutu, a large part of the revenue never makes it into the state budget. Gécamines, the state-owned company, continues to be the main culprit in the diversion of Congo's mineral revenues from the budget by selling concessions and mining licences

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<sup>53</sup> See: <https://data.worldbank.org/indicator/DY.ODA.ODAT.PC.ZS?locations=CD>.



(Global Witness, 2017, p. 6). According to Global Witness's investigation of five secretive mining deals, around 1.3 billion USD was lost to corruption between 2010 - 2012. These secretive deals were struck with offshore companies which managed to get hold of mining licences at knockdown prices. Later it was revealed that these companies belonged, or were linked, to Dan Gertler, a billionaire Israel businessman who is friend of President Joseph Kabila (Global Witness, 2017, p. 10). The companies in the five offshore deals paid state bodies 275.5 million USD for control of the mining assets, although they were worth at least 1.63 billion USD (ibid).

These secret deals are not the only way that money disappears in the mining industry. Every year private international mining companies in Congo pay over a billion dollars a year in taxes, royalties and other charges to tax agencies and to Gécamines. Data analysed by Global Witness and Extractive Industries Transparency Initiative (EITI) shows that 30-40% of the payments fail to reach the national treasury. It is estimated that between 2013 - 2015 more than 750 million USD disappeared. At least some of the funds were allegedly distributed among corrupt networks linked to President Kabila's regime (Global Witness, 2017 p. 6). These resources are important for President Kabila, as it gives him funding to sustain patrimonial networks and buy support. Funding from the mining industry has, for example, been instrumental in financing President Kabila's election campaigns (Kavanagh, 2016).

In addition to mining, President Kabila and his family are also involved in a number of other businesses and own a lot of land in the country (Congo Research Group, 2017). The income from the mining industry and the other businesses makes President Kabila and the circle around him less dependent on aid. It also makes it more attractive to stay in power and it is a widely held belief that one of the reasons why Kabila is stubbornly insistent to hold on to power is because of his investments in the country. This is in line with Reno's finding that predatory states are usually countries where it is particularly rewarding to hold on to power (Reno, 2015, p. 730).

The entrance of China in Africa makes it even less necessary for the regime to listen to the Western donors. China has become an important player in Africa's

economic activities since the turn of the century and the DRC with its natural resources is high on China's list of African strategic partners. China has a policy of non-interference in Africa (Kragelund, 2010), which makes it even more attractive for the political elite. The unconditional support for Kabila's regime has, however, on occasions created tensions in the form of targeted and destroyed Chinese businesses in connection with political riots (Kabemba, 2016; News 24, 2015-01-25).

In 2007 Congo and China signed the Sicomines agreement, which is commonly referred to as the deal of the century as it was the largest Chinese investment programme in Africa to date. In concluding the agreement, the Congolese government sought to finance a set of infrastructure projects which were badly needed, whereas on the Chinese side the main purpose was to gain access to key natural resources (Maiza-Larrarte & Claudio-Quiroga, 2019, p. 423).<sup>54</sup> The Sicomine deal has stimulated the entry of additional Chinese investors into the Congolese mining sector, and China is now the dominant investor in the mining industry in Congo (Global Witness, 2017). Apart from minerals, China is also importing a large amount of timber from Congo (Kabemba, 2016 p. 76). China is DRC's principal trading partner,<sup>55</sup> and it is also the primary source of Congo's foreign direct investments, followed by France and the USA (Renwick, Gu, & Hong, 2018, p. 6).

The abundance of natural resources, and the interest of both Western and Chinese companies to make deals with Congo sharply contributes to making the elite less dependent on Western aid. It also, and more seriously, make the elite independent from its own population. Through the control of lucrative mining deals, the control of natural resources and corruption the elite has managed to distance itself from the population. It doesn't even need to exploit them, as they have tapped in to more lucrative channels within the world economic system.

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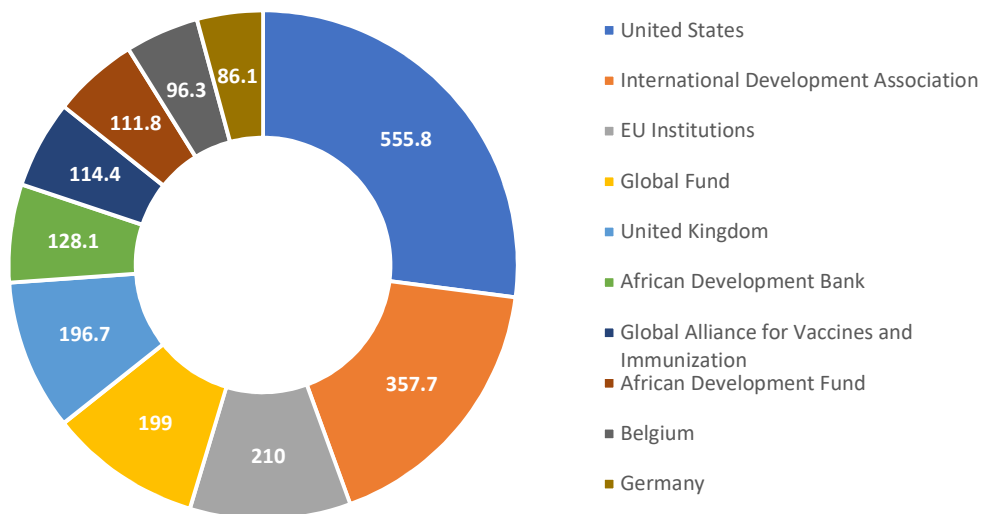
<sup>54</sup> The deal provides for the Chinese consortium to loan up to 3 billion USD to a joint-venture company in order to build infrastructure projects (Global Witness, 2017). The loans are to be repaid through the mining profits made by Sicomines (ibid). The deal has been critiqued for being biased towards China, and for having been negotiated behind closed doors with minimal transparency. In addition, the costs and allocation of infrastructure deals are unclear and many of them have been delayed and been much more expensive than planned (Global Witness, 2011).

<sup>55</sup> China accounted for 46% of Congo's exports and 25% of its imports (Renwick, Gu and Hong 2019 p. 6).

### *Heterogenous donors and their divergent motives*

The donor community in Congo is a rather heterogeneous group, as we can see in graph 3, with a mix of large UN agencies, multilateral development banks, and the European Union (EU), as well as a number of bilateral donors and international NGOs. This contrasts with the Cold War era, where the donor scene was totally dominated by Belgium, France and the USA. The biggest bilateral donor to the country is the USA, followed by the UK, Belgium, Germany, Sweden and Japan<sup>56</sup> (OECD/DAC, 2018). Although the Chinese government is investing heavily in Congo, it is not a traditional donor. The Chinese financing is mainly in the form of loans in exchange for natural resources. Hence, its contribution is not reflected in aid contributions reported by the OECD/DAC. Neither is China participating in the various aid coordination groups that have been established by the Western donors.

Figure 3: Top ten donors to Congo, 2015-2016 in USD million.<sup>57</sup>



As elsewhere, the motivation for a donor to support a country depends on a mix of factors and these might vary over time and for individual donors. Sometimes aid is driven by altruism, but usually it is also motivated by factors such as

<sup>56</sup> Based on gross disbursement data.

<sup>57</sup> OECD data 2018.

commercial or diplomatic interests, geo-strategic considerations or an interest in keeping and promoting one's influence (politically and/or culturally). As we saw earlier in this chapter, aid to Congo during the Cold War was largely motivated by political considerations, i.e. stopping the spread of communism in Africa. Today, humanitarian considerations and a wish to stabilize the region in order to avoid another costly African 'World War' appear to be the main considerations, although economic considerations, are also present. USAID's development cooperation strategy for the DRC 2014-2019, for example, notes that:

*“The DRC is too large, has too much economic potential, and is too centrally located in Africa to let it fall back into the open, widespread conflict that characterized the late-1990s/early 2000s. Its strategic mineral resources, along with oil, timber and hydroelectric potential have all been recognized as critically important to U.S security. Instability in the DRC also affects all nine of its neighbors, as its large swaths of ungoverned spaces have proven to be good hiding places and training sites for foreign-armed groups... All of these considerations, in addition to the human toll and the great cost of the continuing humanitarian response to the needs of conflict-affected populations ensure that DRC will remain a priority country”* (USAID, 2014a, p. 10).

The fact that Congo is also one of the poorest countries in the world and is far from reaching any of the MDGs has also motivated some donors, such as the U.K, to increase its aid budget for the country (DFID, 2011a, pp. 1–3). Belgium, being one of the largest donors to the country, is eager to keep its ties with its former colony. As one of my interviewees said: *“Congo is the one country where Belgium can feel like a big power”* (interview donor official, Kinshasa, 2014-12-05) The Belgians have a large presence in Congo with staff levels that makes other embassies jealous. To be posted to Congo is also seen to be a strategic career move for Belgian diplomats, and the Ambassador is usually a senior official. This is in contrast to some other countries, like the U.K. and Sweden, that often send more junior political officers and first-time Ambassadors to the country. As we saw earlier in this chapter, Belgium was initially a reluctant colonizer and even today support for continued involvement of Belgium in Congo is divided along language divides. The French speaking Catholics are keener on a continued relationship with Congo than the Flemish section of the population. It is commonly said in Congo that they have more problems with the Flemish speaking ministers. France continues to be keen in supporting the French influence in Africa. In general, the USA and Belgium usually take a tougher stand

against the regime than France. France was, for example, more reluctant to abandon Mobutu, and many Congolese believe that France under Macron is more hesitant to take actions against Kabila than the USA and Belgium.

Critics of aid often assume that aid is provided to Congo in order to control its vast natural resources (see for example Marriage, 2010). This is also a popular discourse in Congo and amongst some non-Congolese activists (Autesserre, 2010, pp. 17–18). Although some companies and countries do profit from the chaos, I would argue that many of the aid donors and their enterprises would benefit from a more stable situation in Congo. The volatile situation in the Congo, has postponed major investment projects and stopped major companies with a reputation to risk from investing in Congo (Stearns, 2010 p. 333). This can be seen for example in the mining industry where industrial scale mining is rare with most of it being done through artisanal mining. Even in 1984, Callaghy noted that the Congolese state lacked the political and procedural predictability that is necessary for a healthy business climate (Callaghy, 1984, p. 204), and it hasn't improved much since then. What donor countries probably are guilty of, however, as Stearns points out, are regulatory failures in the way that 'mining cowboys' have been allowed to get away with massive frauds, hiding behind shell companies registered in tax havens. In other words, western governments have not cared enough about the behaviour of their own companies (Stearns, 2010 p. 333). This might be slowly changing, as the inclusion of Dan Gertler, Kabila's grey eminence, on the USA sanction list seems to indicate (Bloomberg, 2017).

### 3.6. The functioning of the health and justice sectors

Having gone through the overall importance of the role of aid, I will here review aid in the two particular sectors that I have chosen to focus on, the health and the justice sectors. I will briefly describe the history of the two sectors, and how they have developed over time. I will give an overview of the structure and the organisation of the sectors, including the key challenges that they are facing. Then I will move on to look at the donors, which ones are involved and how much aid is given. Finally, I will look into the specific programme(s) in each sector that I have been reviewing in-depth throughout my research.

### 3.6.1. The health sector

In the 1970s the community care system that the Congolese system is built upon was, for a brief period of time, seen as a model for the rest of Africa. Today, an estimated 70% of Congolese have little or no access to health care (USAID, 2014a), the life expectancy rate at birth is 60 years (World Bank country profile, 2016)<sup>58</sup> and the country has one of the highest maternal mortality rates in the world.<sup>59</sup>

However, there are some rays of hope. As Pearson, in a case study on service delivery in Congo in 2011 pointed out, health is one of the stronger of Congo's very weak social sectors (Pearson, 2011, p. 13). Compared to some other sectors, there is a national health structure in place that donors and the government can build upon in order to strengthen health service delivery in the country. The government has developed a national development plan that is praised by observers and is generally seen as being one of the best in the region. The government has also developed a so-called basic minimum service health package that all health centres should follow. There is a complementary health packages scheme for hospitals. These measures have helped to provide a degree of policy coherence and uniformity in service delivery in an otherwise uncoordinated system. It appears that there is some political will at the Ministry of Health, although patchy, to improve the situation and the country has been making progress in reducing child mortality. Between 2000 and 2015, the infant mortality rate decreased from 107.4 in 2000 to 74.5 deaths per 1,000 live births in 2015 (DFID, 2018, p. 6) .

The health system is managed like a pyramid with the Ministry of Health at the top, followed by 26 provincial ministries of health, and with 515 health zone levels that form the operational base of the system (Waldman, 2006 p. 6). The health system is highly centralised, at least on paper, and the Ministry is responsible for making policies and for overseeing the health system (Integrity, 2014, p. 15). At the provincial level there is the provincial Minister of Health, appointed by the governor, and the 'Département de Santé' (DPS). The health zones are directed

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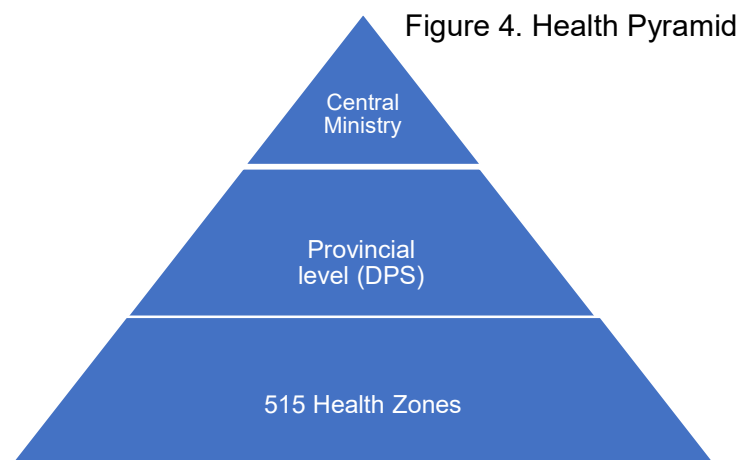
<sup>58</sup> <https://data.worldbank.org/country/congo-dem-rep>.

<sup>59</sup> The rate is 693 per 100 000 live births ([http://www.who.int/gho/maternal\\_health/countries/cod.pdf](http://www.who.int/gho/maternal_health/countries/cod.pdf)).

by a Head Medical Chief (Médecin Chef de Zone) who is supported by an administrative health zone team (Équipe Cadre du Bureau Central de Zone (ECBZ) (Integrity, 2014 p. 9). The Health Zone is sub-divided into a variable number of 'Aires de santé' that consist of several health centres and even more peripheral health posts. In addition, each health zone has a general reference hospital which is responsible for the most serious cases in the zone (Integrity, 2014, p. 10).

A large number of the health centers are run by faith-based networks and almost half of the health zones are co-managed by the FBOs (Waldman, 2006 p. 6). They exist in symbiosis with the government, and there are complex management systems between them,

which I will go through in more detail in chapter 6, where I will analyse the hybridity of the sector. The population is formally involved in the management of the health system through the system of so-called CODESAs.<sup>60</sup>



### *Key challenges facing the health sector*

The sheer size of the country, the recurrent conflicts and lack of staff and health centres in rural areas are just some of the difficult challenges the health sector is facing. The Ministry of Health is quite open about the problems they are facing and the health policy stresses that part of the problem with poor health coverage is related to ineffective leadership at the Ministry of Health (SNSS, 2009 and 2016). The MoH has, as a result of poor governance, chronic staffing problems and under-financing, lost the power to make independent decisions. It has difficulties in coordinating the activities of donors and is unable to control the financing of the health sector or the planning framework of health zones in the

<sup>60</sup> Comités de développement Sanitaire (ASSP gov. p. 1).

face of external initiatives, in part because as we will see later, donors are often by-passing the government.

National budget: Government spending on health remains extremely low. The national budget that goes to the health sector is low, with 4.9% of 2016's annual budget allocated to health (Ministry of Budget). Current health expenditure per capita was 34 USD which could be compared with Rwanda and Uganda where expenditures are 143 USD and 139 USD per capita respectively (USAID website, figures are from 2015).<sup>61</sup> Most of the budget remains at the central level, which leaves the provincial and zone levels, where responsibility for service delivery resides, with very few resources (DFID, 2018, p. 6)

To make things worse, there is also a very low understanding of the budget process and budgeting at the Ministry of Health. Funding mysteriously disappears on the way from the Ministry of Finance to the Ministry of Health. As one former Director at the MoH put it: *'Budget lines exist for health and the money leaves the Ministry of Finance, but then nobody knows where it goes'* (indicated in a confidential report). The confusion over budget lines and where they end up is a common problem in Congolese ministries and does not only relate to the MoH. One specific problem with the health budget is that a very large part of the budget allocation goes to the National Programme for Blood Transfusion. In 2016 and in the first half of 2017, the blood transfusion programme has used up much of the health budget (respectively 27% and 43% of all spending after remunerations) despite not officially having an allocated budget (DFID, 2018, p. 12). The most likely reason is that money is siphoned off from the blood bank into somebody's account. In its request to the Ministry of Budget for 2018, the Health Ministry has strongly advocated for a specific and realistic allocation to the blood programme (ibid).

Human resources: A closely related problem is weaknesses in Human Resource management. The majority of health staff members are not paid at all. It is difficult to get exact figures on who is paid and who is not, and it varies between the 26 provinces. In a study undertaking in Kasaï, DFID found that out of 4 773 health workers identified, only 10% received a salary, whereas 24% received a salary

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<sup>61</sup> <https://idea.usaid.gov/cd/congo-kinshasa/health>.



supplement (DFID, 2018, p. 23). As a consequence, health workers are heavily dependent on the so-called user-fees, which are out of pocket payments by patients. The user-fees not only provides salary to the staff at the health center but also finances administrative staff at various levels who do not have direct access to payments and therefore have limited possibilities of making money. This is what the Congolese refer to as the 'ventilation system', which can be described as a form of alternative taxation. The exact figures that flow through the system from the bottom all the way up to the Ministry are hard to get but studies have shown that 5 - 10 % of the health centres' revenues from the patients move up the ladder to finance staff at the health zone, provincial and central levels (SRSS, 2009; Weijs et al. 2012 p. 30). The high poverty rates combined with high user-fees have left the population to a large extent without any affordable quality care, forcing people to rely instead on self-medication, traditional healers or simply doing nothing about sicknesses and diseases.

#### *Donor proliferation in the health sector*

There are more than a dozen bilateral and multilateral donors and hundreds of INGOs and NGOs involved in the health sector in Congo. Most are focusing their attention on the eastern, conflict-ridden part of the country. USAID is the largest bilateral donor, followed by DFID. Among the multilateral organisations, the World Bank, the EU, UNFPA and UNICEF are major actors. Global funds, such as GAVI and the Global Fund, are major players supporting vertical programmes and providing free medicines and bed nets.

Due to concerns about capacity limitations and the possibility of corruption most international assistance is implemented through dedicated governmental implementation units and non-governmental contractors, often INGOs. This adds to the complexity and fragmentation of the sector. It is only lately that donors have started to take issues regarding sustainability and state-building more seriously and started to collaborate more closely with the Ministry of Health and the structures at the provincial and local level.

The donors are funding around 40% of the health sector, making it the second largest sector for donors in the country (OECD data, 2015). Donors' are funding around 20% of the recurrent costs of the health sector per year and around 80%

of the total investments such as the building and rehabilitation of health centres and hospitals.

Having gone through the donor involvement in the health sector, I will now describe in some detail the DFID programme in health. As explained in the conceptual framework this is the largest bilateral health programme, and the one that I decided to review in-depth.

#### *DFID's Access to primary health care programme*

DFID has been engaged in the health sector in Congo since 1997. The support was initially mainly focused on humanitarian assistance through UN agencies and INGOs. However, it has now evolved into longer term development projects aiming to improve both access to, and quality of, healthcare provision (DFID, 2011b, p. 1).

In the spring of 2012 DFID started its flagship programme in health, the '*Access to Primary Health Care*' (ASSP). This built upon a former programme '*Access to Health Care*' that was implemented by the International Rescue Committee (IRC), which had a more humanitarian approach and didn't focus on strengthening the health system itself.

The ASSP programme is the biggest programme financed by DFID. It involves £188.3 million over a five-year period (2012-2016). The programme was later extended to continue until 2019 (DFID, 2018). During the first two years of the programme, Swedish Sida made a smaller contribution (4 million USD) to the programme in the form of a 'silent partnership', which meant that DFID alone was managing the programme (Sida, 2013a).

The overall programme aims to strengthen the government's health system by providing comprehensive support to 56 health-zones in four provinces. The programme has two components:

- 1) The ASSP service delivery programme. This component has a strong emphasis on ensuring that reproductive, maternal, neonatal and child health improves in the supported health zones. It provides health systems strengthening and 'Appui Global', i.e. comprehensive support to the health zones in line with the Ministry of Health's minimum package of activities

for primary health care (Sida assessment, 2013 p.1-2). The aim of the programme is to reduce mortality among children under five by 50% in target areas; to improve reproductive and maternal health: and to provide 600,000 people with access to clean water and sanitation.

- 2) Reinforcement of Institutional Capacity (Renforcement des Capacités Institutionnelles, RCI). The RCI component aims to support the MoH at central level through improving core functions such as stewardship, facilitating an enabling environment for service delivery, policy setting, implementation/quality control and information management (DFID, 2012c).

The programme is being implemented by a consortium of international and local organisations. The consortium lead is IMA World Health, an American faith-based organisation that has been working in Congo since 2000 and which has been working in close collaboration with SANRU, a local CSO that used to be part of the Protestant Church of Congo but is now an independent organisation. IMA's four partners are each responsible for implementing the programme in a specific province.

- Sanru is covering the province of former Kasaï-Occidental.
- IRC covered the health zones in South Kivu, which were phased out during the first years of the programme.
- World Vision is responsible for the health zones in the former province of Equateur.
- Caritas (linked to the Catholic Church) works in former Province Orientale.

In addition, there are four technical partners, each one responsible for a sub project:

- 1) Family Planning and reproductive health (Path Finder)
- 2) Operational Research (Tulane School of Public Health)
- 3) Empowerment and Accountability (IMA)
- 4) Development of a health database and registration of health workers (Intra-health)

The programme has a strong community development component in order to involve the local community more actively in the co-management of the health

care centres, just as they were in the 1970s and 1980s. This is part of DFID's agenda of increasing accountability and good governance in the sector (DFID, 2012a; Sida, 2013a).

The programme has been reviewed by UK Parliament's International Development Select Committee, and received overwhelming praise for its localised approach and the results the programme has achieved, such as utilisation rates having risen to 52% in the focus areas (U.K House of Commons, 2017, pp. 27–28). During the first three years, the annual programme performance score was an A which means that the outputs met expectations. In 2015/16 and 2016/2017, it received a B meaning that the outputs moderately did not meet expectations, and the risk rating has gone from Medium to Major. Part of this is related to the security challenges in the Kasaï and part of it to some 'significant programme issues', which seems to relate to mismanagement of funds in two of the four provinces in which the programme is active. DFID has subsequently strengthened the verification of medicines distributed and introduced more thorough checks on the status of equipment being distributed. Progress includes increased annual health service utilisation in the four provinces, increased use of health management information systems to support decision-making, a decrease in the number of 'ghost workers' in two pilot provinces and increased levels of vaccination (DFID, 2018, pp. 13, 22).

### **3.6.2. The Justice Sector**

The justice sector in Congo is a dual system with two different legal systems. There is the traditional system, unwritten, which is also referred to as the local or traditional system of justice; and the formal, written one that is based on civil law. The formal system was introduced by the Belgians, and many of the laws are still the same as those inherited from the colonial system (Tekilazaya, et al., 2013b, p. 20). The traditional system is based on a system where the customary chief is the judge and where a settlement is negotiated with the goal of restoring social cohesion in the community. People are sometimes also resorting to other informal mechanisms, such as mediation by churches. In addition, some international organisations have set up structures for justice resolution in different parts of eastern Congo (see for ex. Jacobs & Kyamusugulwa, 2018; Jacobs et al., 2017).

The police are also mediating a number of cases and thereby solving conflicts before they are taken to the court. It is estimated that the non-state system is handling around 75 percent of the conflicts (Sida, 2011).

There are many different reasons for the persistence of the dual system, which I will explore in more detail in chapter 6. The formal system has an incomplete physical infrastructure, i.e. out of 180 courts foreseen only about 50 have so far been constructed (Tekilazaya, et al., 2013a, p. 23). Customary Courts, on the other hand, have a presence from the village level up to royal courts of chiefdoms (Verweijen, 2016, p. 3). Apart from being far away and often seen as too expensive, the formal system is not well understood by the population (EU, 2013; Tekilazaya et al., 2013a, pp. 26–27).

Unlike in the health sector, the government has not developed a comprehensive national justice policy and strategy, although the Ministry of Justice developed an action plan for justice sector reforms in 2007. This plan had, however, according to both interviewees from donors and the government not been used as a guiding instrument as I will show in chapter 5.

### *Challenges in the justice system*

In this section I will deal with the challenges encountered in the formal system, which is the one that the donors are trying to reform. In chapter 6 on real governance, I will review some of the challenges with the customary system.

There are a number of weaknesses with the formal justice sector that need to be addressed in order for it to function independently; and for people to gain trust in the system. The root problems are the lack of independence, shortage of funding and insufficient human resources.

Interference by the executive branch is common and has a long history in Congo. This is one of the main reasons why the population has no confidence in the formal system, and it effectively hinders a credible system to deliver the rule of law from developing. During Mobutu's rule, he was the head of the justice system and there was no independence of the judiciary. When the constitution was developed in 2006 it was agreed that the civilian court system should be reformed. A Constitutional Court was going to be established, but it was not until

2015 that the court was inaugurated, and there are doubts regarding its independence after some controversial verdicts by the court in favour of President Kabila.

The new Constitution also stated that a judicial service council (Conseil Supérieur de la Magistrature - CSM) that would function as an oversight and monitoring body for judges and prosecutors should be established. Although it is now up and running, it is not perceived as being an independent body, and there is still an urgent need to eliminate corruption and impunity within the judicial profession (USAID, 2014b, p. 1).

The independence of the justice system is also impaired by insufficient funding, which puts into question the government's seriousness about creating an effectively functioning justice sector. Most of the budget goes to salaries for judges and other court employees. The judges are in general receiving their salaries, whereas only around 20% of the clerks do (interview implementer, Kinshasa, 2015-06-01). The government spends almost nothing on infrastructure and rehabilitation. In 2015 the percentage of the justice budget going to infrastructure was 3.8% (Ministry of Budget) leaving the donors to finance most of the cost for rehabilitation and infrastructure. The low level of budget set aside for infrastructure puts into question the feasibility of the government's plan to build courthouses in every territory.

Despite some recent recruitment, there are insufficient judges in the country and their number is not even enough for the existing number of courts in the country (Ilac, 2009, p. 20). In addition to the lack of staff, there is also the question of the quality of staff and their knowledge of laws and regulations. For example, there is no regular dissemination of new laws or regulations and the capacity within the Ministry of Justice to lead reforms is weak, especially as most of them do not have any judicial background (Sida, 2011, p. 5).

#### *The donor community in the justice sector*

The justice sector involves fewer donors than the health sector. The main actors have been the European Union, UNDP, and the USA, followed by Canada, Sweden and Belgium. There are also several International NGOs active in the sector, such as the International Centre for Transitional Justice (ICTJ), RCN

Democracy and Justice, 'Avocats sans Frontières' (ASF) and the American Bar Association (ABA). The International NGOs are both implementing their own programmes as well as acting as programme implementers for the bilateral or multilateral donors. The UN peace-keeping operation mission, Monusco, has also been active in the area.

There have been few major ideological differences between the donors, and they have approximately the same vision for justice reforms. Most of them are involved in rather similar programmes, focusing on justice reforms and training of personnel. Some of them are also engaged in building courts and prisons, and many of them are involved in promoting mobile courts which are seen as a way to bring the formal justice system closer to the population. The results of these courts have been mixed and their sustainability has been questioned since they are totally dependent on aid funding. There is a concentration of activities in the eastern part of the country but the EU, UNDP and USAID (sometimes co-financed by bilateral donors such as Canada, Sweden and Belgium) are also trying to address challenges at the central level, working with the Ministry of Justice and the CSM. As in the health sector, there is a donor-government coordination group. It has, however, for reasons that I will explore in chapter 5 been less functional than the one in health.

Few donors, except from the Belgian organisation RCN, have been directly involved or working with the traditional system, except when it comes to land disputes, where the traditional chiefs still play a major role.

### *The PARJ and Uhaki Safi programme*

The two programmes I reviewed were the 'Programme d'Appui à la Réforme de la Justice' (PARJ) and 'Uhaki Safi', which means fair justice in Swahili.<sup>62</sup> Both programmes were financed by the European Union, in close cooperation with Sida, and in the case of Uhaki Safi also with the support of Belgium (EU PARJ, 2009; EU Uhaki Safi, 2010).<sup>63</sup> The programmes were promoted by the EU as complementary, working in synergy with each other, although they had been

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<sup>62</sup> The programme is by the EU also referred to as PARJ-E, where the E stands for East, as in the eastern part of Congo.

<sup>63</sup> PARJ, which had a total budget of 29 MEUR was being co-financed by Sweden, who contributed with 8 MEUR (Sida, 2009). Uhaki Safi, with a total budget of 18 MEUR, was co-financed by Sweden (6 MEUR) and Belgium (2 MEUR) (EU PARJ, 2009).

developed separately. The PARJ programme focused on reforms at the national level as well as supporting reforms in two pilot provinces (former Kasai-Occidental and Bas-Congo). Uhaki Safi was focused on eastern Congo (north and south Kivu and Ituri). In addition to general justice reforms, Uhaki Safi also included a specific component focusing on sexual violence and another on land-reforms (EU, Uhaki Safi, 2010). The two programmes were also funding the building and reconstruction of courts, justice-buildings and prisons. The PARJ programme covered the period 2009-2014. Due to delays in setting up the programme its implementation only commenced in 2011 and was closed down in 2016, although some of the construction work is still ongoing in 2018. The Uhaki Safi programme ran from 2012-2016 but was later prolonged to 2017.

Both of the programmes built upon previous programmes supported by the EU. The Uhaki Safi programme was a follow-up to a programme called REJUSCO that had been operating in eastern Congo since 2007 (EU Uhaki Safi, 2010). That programme closed down after charges of corruption were levied against the implementer, and there was a gap before the Uhaki Safi programme started in 2012. The rather abrupt way that the programme was closed upset the Ministry of Justice at both the central level and the district level (interview consultant, Kinshasa 2015-06-09; government official, Goma, 2015-04-14). The PARJ programme built upon a governance programme called PAG<sup>64</sup> that included justice reform components (EU PARJ, 2009, p. 2).

The programmes had rather complex implementation structures that contributed to delays. A German Consultant firm, Gopa, was chosen as the programme implementer for PARJ and later also for Uhaki Safi. In the case of Uhaki Safi two international organisations, ASF and RCN, were also selected to implement parts of the programme in close collaboration with GOPA. This arrangement proved problematic as the roles between them were not always clear and on numerous occasions they found it difficult to work with each other (implementer, Kinshasa 2015-03-02). Sweden and Belgium, who contributed with financing to the EU, did so through a process where the overall responsibility of the programme was left to the EU. They, however, participated in dialogues and in follow-up meetings.

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<sup>64</sup> Programme d'appui à la gouvernance.



### 3.7. Conclusion

The historical legacy of Congo weighs heavily on the present. The Belgians hastily left a country in the hands of an elite that hadn't been prepared to rule the country.

As pointed out by Callaghy and by Stearns amongst others, since independence the story of the shift of power from Mobutu to Joseph Kabila has been about staying in power, not about creating a strong, accountable state (Callaghy, 1984, p. 202; Stearns, 2010). In a system where the discretion of the ruler, fiscal resources (mainly in the forms of minerals) and corruption are the glue that holds the system together, externally driven reforms often become a direct threat to the patrimonial system. In the words of Callaghy: *'When the bureaucratic clashes with the patrimonial, the latter will most likely win out'* (Callaghy, 1984, p. 202). This has led to a system that privileges loyalty over competence and wealth and power over moral character (Stearns, 2010 p. 331). In the Congo, everything flows from political office, including access to the best business deals, influence and status. For those without power there are few opportunities to prosper. This explains why it has been easy for Mobutu and Joseph Kabila to pay-off and co-opt the opposition. The ruling elite has not needed to rely upon either its population or a functional bureaucracy. The misuse of resources from Congo's mineral wealth and aid funds has helped to facilitate this situation. A heavy responsibility falls on those who looked the other way as state institutions eroded and political life was controlled by Mobutu. When the Cold War finished and aid was significantly reduced, it led to a further erosion of the Congolese state and the eventual overthrow of Mobutu. However, despite the departure of Mobutu and the increase of aid, the underlying structures haven't changed, and hence the corruption and mismanagement have continued.

## Chapter 4. The Contemporary Engagement Between Donors and the Government – a Complicated Relationship

### 4.1. Introduction

As explained in chapter 1, the relationship between the donors and the government has often been hostile. As I will show, the donors see themselves as the ‘good ones’ trying to develop the country despite what they perceive as the Congolese elite’s lack of political will to initiate reforms and stabilise the country. On the Congolese side there is a perception that the donors are there to profit from Congo’s large and rich resources.

The donors have been rather unsuccessful in engaging in meaningful policy dialogue with the Congolese government, and they have, in general, been reluctant to use conditionality. The government for its part seems to keep the donors at a distance and has done little in the way of ‘image management’ yet has still managed to carve out a substantial amount of policy space and secured a continuous flow of aid. Part of the explanation is without doubt related to the geo-strategic importance of Congo, situated in the heart of central Africa and bordering nine other countries, and the abundance of natural resources, all of which makes it hard to for the donors to ignore the country. However, Congo has also been rather skilful in playing the donors by having an aggressive discourse and in avoiding having high-level discussions by, among other strategies: 1) referring to the country’s history of colonialization; 2) playing the sovereignty card when it fits their purpose; and 3) using the international discourse of the Paris Declaration and country ownership in the negotiations.

### 4.2. Perceptions of self and others

As explained in the conceptual chapter, it is important to understand the images partners have of each other in order to understand how they engage with one another. For example, the more positive view the donors have of the government, the more likely they are to try to find a win-win and mutually beneficial solution; and vice-versa.

### *The 'good guys' and the 'bad guys'*

One doesn't have to spend much time in Kinshasa to realise that there is a considerable amount of tension between the donors and the government. The cautious optimism that surrounded the transition period in the early 2000s and following the 2006 elections has faded, because of what donors see as reform failures, the continued insecurity, the ongoing political situation, dominated by increased human rights abuses and uncertainty regarding the holding of presidential elections.

During my interviews with Heads of Cooperation and high-level diplomats I was presented with a rather grim picture of the willingness of the government to improve the situation in the country. For example, one Head of Cooperation told me:

*"The DRC is a predatory state, the donors might not want to accept it, but let's face it that this is the reality"* (Head of Cooperation, Kinshasa, 2015-03-20)

Some donors I interviewed not only referred to the state as being predatory but went one step further and claimed that the government was cunningly manipulating the situation in the country to its own advantage. As the following Head of Cooperation said:

*"The fragility of this country is manipulated and fabricated. It is a useful governance structure for the elite. If there is no accountability they can do as they want. They don't want the country to be stable as the current situation is in their interest"* (Head of Cooperation, Kinshasa 2014-11-21).

During my last fieldtrip in late 2016, there was also suspicion in the donor community that Kabila was inciting violence in the east and in the central Kasai region as a pretext for not holding elections. Although it is certainly true that the regime is profiting economically from the lack of rule of law and accountability, it is doubtful whether Kabila has the strength and capacity to orchestrate the chaos. It is more likely, as others such as the Congo expert Kris Berwouts argues, that the regime is not controlling the situation but they are seeking to profit from situations when they arise (Berwouts, 2017b).

The donors are not the only ones with a bleak outlook on the government. Several reports produced by international organisations, such as Human Rights Watch,

the International Crisis Group (ICG) and Global Witness, also cast the regime in a negative light. The Enough project, an American organisation that monitors the mining sector, labelled the Congolese state as criminal in its report on the situation in the country in 2016 (Lezhnev, 2016).

Do all the donors hold equally negative perceptions? There were some interesting exceptions. Generally, the Heads of Cooperation and other people working directly on aid tended to be a bit more negative than some of the high-level diplomats from multilateral organisations. For example, the UN Secretary General's Special Representative (SGSR) at the time of my first two field visits, Martin Koebler, was, according to some other diplomats and UN staff members, overly optimistic about Congo.<sup>65</sup> The EU Ambassador, a French diplomat, was also perceived by his staff and some other diplomats to be overly cautious in criticising the government (interview diplomat, Kinshasa 2016-11-17). In my experience, multilateral organisations tend to be more hesitant to criticize the host government and more often see their role as being a partner to the government, than the bilateral donors. In the case of the SGSRs, they are in a particularly delicate situation considering that the government has on several occasions asked Monusco to leave.<sup>66</sup> Hence the SGSR needs to find a way forward so that the government allows the peacekeepers to stay, which without doubt makes taking a critical approach more difficult.

### *We are here to help - the donors' views of themselves*

Perhaps unsurprisingly, the donors portrayed themselves as the 'good ones' in my interviews. For example, one Ambassador I interviewed said the following:

*"It is us [the international community] who are the ones that are making demands in this country. The people don't do it themselves because they expect a Hobbesian state.<sup>67</sup> They have no expectations of the government, and the government simply don't care about them. So we are the ones that are making the demands. It is sad but that is the way it is"* (interview Ambassador, Kinshasa 2015-06-10).

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<sup>65</sup> Interview with diplomat, Kinshasa 2015-06-29; Head of Cooperation, Kinshasa 2015-02-24; UN official, Kinshasa 2014-11-20.

<sup>66</sup> President Kabila has regularly asked for an exit strategy from Monusco, he did so for example before the elections in 2011 and again before the supposed elections in 2016 (ICG, 2018, p. 8).

<sup>67</sup> Referring to the philosopher Thomas Hobbes, and his idea about how life would have been before societies came into existence, stating that life would be 'solitary, poor, nasty and brutish'.

I heard similar comments from several other diplomats and donors throughout my field research. One of them expressed himself a bit more dramatically:

*“The donors care much more about the population than the government. Donors know that if you withdraw, people will die. So what level do you set - what kind of levels of death are you ready to accept?”* (interview Head of Cooperation, Kinshasa 2015-06-18).

The above quotes highlight three key elements in how the donors perceive themselves: i) they are in Congo to do good things and are on side of the population, trying to defend it against the state; ii) the government is callous, not caring about its population; and iii) the population has no power and will not be able to stand up against the government in order to claim their rights. Hence the donors are needed in order to protect the population and to help it claim their rights.

It would be easy to dismiss accounts like these as naïve or even neo-colonial. However, in fairness, statements like the above should be seen in the context of the current situation in Congo with a government hanging on to power and violently clamping down on peaceful demonstrations. The government also has little popular support, with a poll from 2016 finding that only 13.4% of the population thought that the government was looking after their interests (Berci & Congo Research Group, 2016, p. 31).

### *Background to the negative perceptions*

So where did these negative views come from? This might seem like a superfluous question to ask considering the precarious situation in the country. However, as I will demonstrate, there are other, deeper reasons behind the donors' negative perceptions of the country.

Firstly, as Dunn shows in his influential book 'Imagining the Congo' (2003), the country has consistently been framed as a country with violent people in need of civilizing influences (Dunn, 2003 p. 4). By examining the discourse about Congo during pre-colonial times through to the first Congo War in 1996/1997, Dunn develops a long view of trends and themes that emerge and recur throughout the history of the country (ibid p. 6). One key theme he finds is that “external actors have frequently attempted to characterize the country as divided, chaotic, and lacking the ability of self-articulation” which allows the external actors to then

speak on behalf of the Congo (ibid p. 9). That the situation is dire in Congo is, I would argue, an undeniable truth. The problem, however, with discourses like this is that by portraying Congo as a chaotic and backward country, external actors de-legitimize the country as a counterpart. As Stearns (2010) points out, these prior perceptions may lead to a lack of understanding of why people are acting like they do, thereby hindering a deeper understanding of the situation.

Second, as the country has so much potential with the abundance of natural resources such as minerals, rainforests, rivers and fertile land, this contributes to an image that if the government could only 'get its act together' the country could be an affluent country contributing to wealth and stability in the region (interview donor official, Kinshasa 2015-07-07). One of my interviewees referred to the 'hopeless potential of Congo', saying the country had so much potential, but due to its politics, this potential was never realised (interview implementer, Kinshasa 2015-07-07). Two of my interviewees considered that as Congo had natural resources and was not the victim of desertification and other natural catastrophes it made it easier to have a more negative view of the Congolese government than other similar fragile countries that lack the same abundance of natural resources (interview donor official, Kinshasa 2015-07-07; and CSO Representative, Kinshasa, 2014-12-11).

### *The reproduction of images*

So how do these images get reproduced within and among the donors? In the conceptual framework we saw that there are many different ways that images get reproduced. One such way is through the International media and reports by International advocacy organisations such as Human Rights Watch, Oxfam and the International Crisis Group which all contribute to homogenising the donors' views on Congo and how problems should be solved. For example, Autesserre shows in her article 'Dangerous Tales – Dominant Narratives of the Congo and their unintended consequences' (2012) that the international media as well as international organisations have created a narrative that to a large extent has been guiding interventions in the conflict-affected areas in eastern Congo. This includes seeing the conflict-minerals as the main cause of conflict, the sexual

violence as one of the main consequences and state-building as the main solution (Autesserre, 2012).

Apart from news and reports, there are also more direct and personalized ways in which images get reproduced from long-term staff members to newcomers to the country. Part of this happens prior to staff arriving in post through, for example, the sharing of images from international media and pre-posting briefings.

Once in the country there are a variety of formal meetings that donors attend. The EU Ambassadors, for example, meet weekly and the EU Heads of Cooperation meet monthly. There are also monthly meetings of all Heads of Cooperation. Diplomats and donors discuss current political events and coordinate their aid programmes and this leads to a more or less harmonized view of the situation. The Ambassadors and Heads of Cooperation also meet at numerous receptions that are held in Kinshasa, where they mingle with each other and exchange the latest views on political developments.

There are many other informal gatherings where donors interact together and where they influence each other's views on the situation in the country. These informal settings can be referred to as a 'bubble', meaning that international staff live in particular parts of the city and rarely socialise outside their group. Although Kinshasa is a big city with an estimated 10 million inhabitants, the circles in which the donors move around are surprisingly small, and few donors leave the enclave of Gombe, the affluent district in the city.

Staff that have been in the country for a longer time pass on their views to newcomers, as I experienced first-hand. Having just arrived in Kinshasa, I attended a conference on aid effectiveness chaired by the Minister of Planning, Mr. Olivier Kamitatu, who gave, what I thought, was a quite impressive speech. He mentioned all the 'right' things, such as the need for aid transparency, a call for better coordination and alignment and a greater focus on national ownership. When I returned to the office I enthusiastically reported back to my colleagues, to find that they were considerably less impressed than me. I was told that Kamitatu was a 'donor darling' who knew what to say but that there was little action behind

his words. I was told not to believe all I heard. Through interactions like this, narratives get reproduced and reinforced.

### *The government's perceptions of the donors*

We have seen how the donors view themselves in relation to the Congolese government. But what about the government? How do they experience engagement with the diplomatic and donor community? What are their perceptions of the donors and what narratives do they use?

Just as the donors' views of the Congolese government are bleak, so are the government's perceptions of the international community. A recurrent theme, related to the relatively widespread critique of Western imperialism, documented by amongst others Baaz and Stern, is that Western engagement is often constructed as driven by greed with the ultimate aim of exploiting a country's national resources (Baaz & Stern, 2013, p. 204). This frequently comes up in both informal discussions and in the media and is well illustrated by the following account of a soldier interviewed by Baaz and Stern:

*"They [the foreigners] all have their interests. Congo is rich in minerals. All minerals that are found elsewhere can be found here - even those that were not yet known by name. The Congolese are systematically used by all countries. European, American, and African - all people who come here, the majority do not come to help, but to exploit"* (Baaz & Stern, 2013, p. 204).

Considering the history of the country, with the exploitative interventions by external actors, starting with the slave traders from European and Arabic states in the 16<sup>th</sup> century to the abuses under the Belgian King Leopold and later the Belgian state, it is not strange that there are these fears.

Another narrative that is closely connected with the greed argument is the idea of so-called 'Balkanisation'; that international actors are there to break up the large Congolese state in order to replace it with a series of smaller states more easily influenced and exploited by foreign powers. This idea is widespread in Congo and one of the major local newspapers 'le Potentiel' used to have on its front page a message stating 'Non à la balkanisation du pays' (no to the balkanisation of the country). Large billboards with the same message can also at times be seen around Kinshasa. The idea that Congo is too big to be managed



and that it should be abolished as a unitary state has also been argued by academics, such as Herbst and Mills (2009a, 2009b). The same argument has been made for other large African states (Clapham & Herbst, 2006). The Balkanization rhetoric is partly used as a tool by the government to unite the country against foreign interference but there is a genuine fear that some of Congo's neighbours are conspiring to take over parts of eastern Congo with the support of Western powers (Berci & Congo Research Group, 2016, p. 22). Behind this fear is the fact that neighbouring countries have indeed often interfered in eastern Congo and the second Congo war was, to a large extent, driven by a wish to exploit Congo's resources.

Hence, the fear of exploitation and 'balkanization' amongst the population is real and the government is using this rhetoric for its own aims. They might partly believe in it themselves but, as other authors have pointed out, governments are sometimes quick to evade responsibility and portray donors as the 'bad guys' when things are going wrong (Collier, 2007; Sjöstedt, 2013, p. 146). This, I would argue is the case with the Congolese government. One prime example is Lambert Mende, Minister of Media and Communications. His role is, like 'Bagdad Bob' in Iraq, to give the impression that all is well in Congo. Congolese people often refer to him as the 'parrot', saying that he repeats whatever President Kabila says. He is also often trying to delegitimize western actors. On one occasion when Human Rights Watch and Global Witness criticised the government for having closed the Radio station RFI, he retorted by denouncing the NGOs as 'humanitarian terrorists' whose aim is to destabilize and balkanize Congo for financial motives (Trefon, 2011, p. 111). As Trefon has pointed out, and as noted in chapter 3, propaganda is a key element in the political culture of Congo. The truth or falsehood of official information is only of relative importance (Trefon, 2011 p. 112). As a consequence, the government often increase 'noise' to mask their own shortcomings. Mr. Mende was added in November 2017 to the EU sanction list for being "responsible for the repressive media policy" in Congo (Council of the EU, 2017).

Being portrayed as particularly 'rich', endowed with exceptional mineral and other resources, Congo often emerges as more or equally important for external actors than external actors are for them. According to some of my informants this is one

of the main reasons why the government feels that it can be tough against the donors, but still anticipate that they will stay.<sup>68</sup>

Amongst government officials that I interviewed who were engaged with donors there were fewer accounts of donors being there to exploit the country. Instead, their narratives, quite understandably, focused on what was needed and what the donors were not doing. For example, donors were not giving them the necessary resources for conducting their jobs properly, by not providing computers and internet services (interview government officials, Kinshasa 2016-11-23; 2016-11-29; and 2015-06-12). This might seem trivial but for people whose salaries and budgets are very low these issues often lead to hostile feelings towards donors. Interviews with staff at the Ministry of Foreign Affairs and the Ministry of Planning also revealed perceptions that donors were not coordinating or involving them sufficiently in their programmes (interview government officials, Kinshasa 2015-06-12, and 2016-11-27).

### *The views of the population*

Thanks to, among others, Berci and the Congo Research Group that are carrying out surveys and to the Harvard Humanitarian Initiative and UNDP that are conducting perception studies in the eastern parts of Congo, there is some information about how people perceive the donors and the government. For example, in a poll from 2018, only 17% said that they could think about voting for a candidate from the President's party (PPRD) and only 6% were thinking about voting for Kabila (Berci & Congo Research Group, 2018, pp. 4 & 12). The Congolese population, however, remains strongly attached to the democratic process, with 95% saying they plan to vote in the coming elections. Views of the opposition candidates are fragmented, with the most popular figure, Moïse Katumbi, likely to get around 24% of the vote (ibid, pp. 4 & 10).

The latest Berci report (2018) suggests that the Congolese broadly welcome foreign involvement in political affairs, despite the ruling party's efforts to portray such actions as illegitimate meddling in domestic affairs. A large majority (68%) welcomed sanctions imposed by the European Union, and a surprising 77% said

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<sup>68</sup> see for ex. INGO representative, Kinshasa 2016-11-01; independent consultant, Kinshasa 2015-07-04.

that they would support the creation of an international steering committee to support the holding of elections, much like the 'Comité International d'Accompagnement de la Transition' (CIAT) at the time of democratic transition between 2003 and 2006 (Berci & Congo Research Group, 2018, p. 17). These opinions resonate well with what Wrong argues to be a tendency in Congo; namely the belief that changes can only come about from the outside (Wrong, 2001). Considering the history of the country, with numerous foreign interventions, and limited opportunities for Congolese people to demand change, these opinions are understandable, although unfortunate.

The graphs below show the population's approval ratings of various organisations and countries. Countries, like the USA, and institutions, like the EU, that have imposed sanctions towards the regime and taken a tough stance against the government regarding the elections and human rights abuses get the highest approval ratings. Belgium, which has been one of the staunchest critics of the regime, is the most popular bilateral partner despite the government's virulent attacks on it (Berci & Congo Research Group, 2018, p. 17). The African Union and neighbouring countries, who are seen to have put little pressure on Kabila, receive considerably less approval (Berci & Congo Research Group, 2018, p. 17; ICG, 2017, p. ii).

Figure 5. Approval rating  
institutions

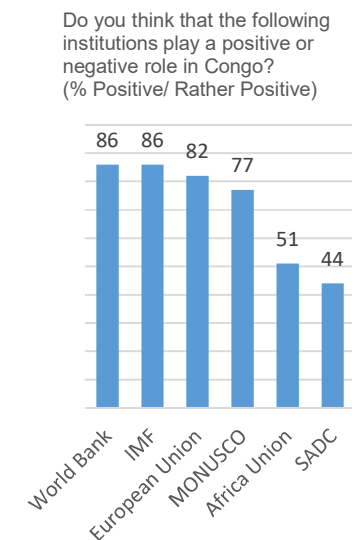
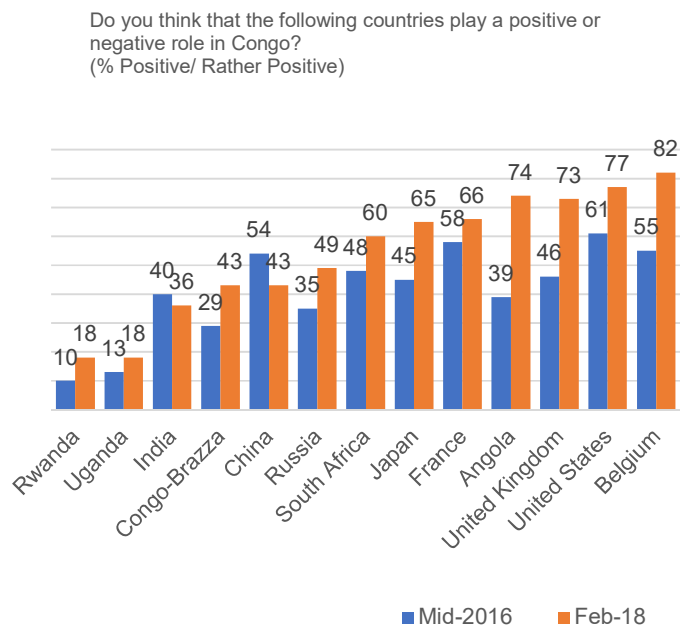


Figure 6. Approval ratings countries<sup>69</sup>



It is worth stating that despite Belgium's popularity, a majority (60%), disapproved of Belgium's decision to put an end to international assistance provided through the Congolese government (ibid p. 18). Hence the donors might be right in being cautious about cutting aid: it might not only hurt the population but the donors' reputation as well.

When it comes to development aid, the picture is bleaker. Many Congolese feel that they do not benefit from foreign aid or humanitarian assistance. In a poll from 2016, 31.3% agreed with the statement that Congo would be better off without aid (Berci & Congo Research Group, 2016, p. 35). Perhaps surprisingly, these responses are even higher in some of the provinces most affected. For example, in North Kivu, where a lot of INGOs are operating, 47.2% said they would be better without them (ibid). In a similar vein, Monusco, whose reputation has been tainted by sexual abuse scandals and by accusations of not sufficiently protecting the population is less popular in the eastern part of Congo, where most of its troops are deployed (Berci & Congo Research Group, 2016, pp. 32–33; Vinck & Pham, 2014, p. 54).

<sup>69</sup> Berci & Congo Research Group, 2018 p. 17.

During a visit to Goma in October 2016, I could personally observe the perceptions reported in the polls. I was, through my job, meeting with representatives from the political opposition and local CSOs who for the most part expressed frustrations by the fact that the EU had not yet issued sanctions against the regime like the USA had done. The frustrations with INGOs and Monusco also came up, and in some areas local self-help groups had put up roadblocks to prevent the distribution of humanitarian aid. North and South Kivu has seen conflict since the early 1990s, but despite all the aid and the peacekeepers, the situation hasn't stabilised and the low approval ratings should be seen in the light of an aid fatigue and disappointment with what has been achieved. As one young man told me: *'We just want to live in peace and go on with our lives, we don't want to be dependent on hand-outs'* (discussion in Goma, 2016-10-12).

The negative views on aid might seem surprising, but are driven by a number of factors, such as resentment that despite all the humanitarian aid and peace-keeping interventions life is still dire, and people don't have a sense that their lives are getting any better. They are also disappointed with Monusco, who despite being the largest UN mission often fails to protect the local population against attacks by various rebel groups. Considering the large number of rebel groups and the large areas the mission is supposed to cover, it is an almost impossible task, but it is understandable that people get frustrated. As Autesserre argues in her book 'Peaceland' feelings toward INGOs and UN staff in eastern Congo are also based on resentment regarding the inequalities in resources between foreigners and the local population, that interveners often don't take local knowledge into sufficient account, and a feeling of humiliation about being dependent on aid (Autesserre, 2014, chapter 6). These resentments sometimes cause the local population to contest and even resist international programmes, such as by throwing stones at vehicles belonging to foreign interveners, or as in the example above, to hinder humanitarian actors from reaching their villages.

### *Summary*

In the above section I have demonstrated that both the donors and the government have negative images of each other, and that little trust exists

between them. The donors constantly highlighted the lack of political will of the elite to develop the country and were frustrated at having to deal with a government that didn't seem to care about its own population. This was explained as either they were simply not interested or because they were seen to be actively benefiting from the current fragile situation, perhaps even manipulating the situation in the country in order for it to remain fragile. The donors considered that they were the ones that wanted to see the country develop, whereas the government either believed or wanted to give the impression to the population that donors were not there for the good of the country. The donors rarely seemed to reflect on their own short-comings or even fully acknowledge the difficulties a 'well-meaning' government would have in reforming a state that is so permeated by patrimonial structures.

These images were partly based on previous experience and have led to an almost complete lack of trust amongst them. In the next section I will explore what strategies that the donors and the government used and how they were influenced by the partners' perceptions of each other.

#### 4.3. Creating and using bargaining spaces

In order to unpack how perceptions shape strategies, one needs to have a better understanding of how aid coordination and dialogue are organized and the possibilities for using conditionalities. Hence, this section will start with an overview as to how aid coordination and aid dialogue are organised in the country, and how the donors and the government tried to shape them. This will be followed by a discussion on the use of conditionality, before a consideration of other strategies that the government and donors have used and how the other party has reacted to it.

##### *Aid fragmentation and proliferation of development plans*

Aid coordination and alignment to the host government's development plans is a key component in the aid effectiveness agenda, along with a focus on policy dialogue and the avoidance of conditionality. In Congo such aid coordination is rendered more difficult due to the fragmentation of government institutions and their competing interests, compounded by fragmentation amongst the donors.

On the Congolese side the responsibility of aid coordination is split across several ministries such as the Ministry of Planning, the Ministry of Finance and the Ministry for Foreign Affairs and International Cooperation. In addition, many substantial discussions are undertaken by the different sector ministries such as the Ministry of Health or the Ministry of Transport. During the time of the interviews, it was not clear which Ministry was in charge for overall coordination with bilateral donors. My respondents at the Ministry of Foreign Affairs said they were responsible as they had the necessary overview and contacts with the international community, which the Ministry of Planning didn't have (interview with a group of three government officials, Kinshasa, 2016-12-02). A number of bilateral donors are signing their overall bilateral development agreements with the Ministry of Foreign Affairs which makes them consider themselves to be the main counterpart (government official, Kinshasa 2015-06-12). The Ministry of Planning argued they were responsible as they had the overall responsibility for the country's poverty reduction strategy (interview two government officials, Kinshasa, 2016-11-23 and 2016-11-27). The donors on their side were, unsurprisingly, confused about who was in charge. According to those that I interviewed, they had the impression that the Prime Minister had decided that it was the Ministry of Planning that should have the overall coordination role, but they hadn't yet seen any formal communication of this (interview with two Heads of Cooperation, Kinshasa 2016-12-02). This type of confusion and overlap is common in Congo, illustrating the lack of central control over the different ministries and a reflection of the competition between the ministries to have the lead relationship with the donors which provides influence over resources and increases their sphere of influence. This is consistent with what I reviewed in chapter 3.3 regarding political culture, and that there are no incentives for collective action.

An equally fragmented and confusing situation was noted regarding development strategies and their status. Congo has no shortage of plans; there is, for example, the government's plan for the stabilization of the country (STAREC)<sup>70</sup> and the donors' response to it (the ISSSS).<sup>71</sup> There is also the Addis Ababa Peace,

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<sup>70</sup> Stabilization and Reconstruction Plan for eastern Democratic Republic of the Congo.

<sup>71</sup> The International Security and Stabilization Support Strategy.

Security and Cooperation Framework for DRC that sets out regional and national obligations as part of the Peace accord with the M-23 in 2013. There are the fragility indicators developed in response to the New Deal and finally there is the second-generation Poverty Reduction Strategy (DSCR-2)<sup>72</sup> that was accompanied by 'le Programme d'Action de Gouvernement' 2012-2016. During the time of my last field research the government had started to work on the National strategy for development (2017-2021) that was going to replace the DSCR-2. The donors that I interviewed complained that it was hard to know which of all the different plans the government gave precedence to, if any. They also complained that the plans were seldom coordinated across different ministries and that they were long wish lists, not giving any ranking to what was prioritised and not.

The lack of clarity regarding coordination and the proliferation of plans led to what one of the donors called 'a culture of workshops', saying that:

*"As a donor, if you are not careful you can easily spend 200% of your time running around at these kind of things"* (interview donor official, Kinshasa, 2015-07-07).

It might have been the strategy of the government to keep the donors busy and to side-track the donors from policy dialogues that the government wanted to keep for themselves. However, considering the overall weak coordination within the government it seems more likely that the proliferation of plans was also driven by a competition between the ministries. Some donors also suspected that the 'culture of workshops' was a pretext to receiving allowances, paid by donors to allow ministry staff to attend workshops and meetings. In this regard, the donors share some of the blame for providing incentives for having numerous plans and strategies. Donors also often provided support in the form of experts and consultants to develop plans and so a small industry built up around them.

The donors are attempting to coordinate themselves through the donor coordination group (GCP). The group meets on a monthly basis and has become more structured over the years with a donor-funded staff member attached to it and being led by an executive group consisting of two representatives from

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<sup>72</sup> Document de stratégie de croissance et réduction de la pauvreté.



multilateral institutions and three bilateral donor agencies. Some of those I interviewed and who had been in Congo for some years claimed that the group now functioned better than previously (interview Heads of Cooperation, Kinshasa, 2015-03-20; 2015-06-02). However, one representative of a major bilateral donor had become increasingly disappointed by the group and had stopped attending (interview Head of Cooperation, Kinshasa 2015-07-02). Others said that progress was being made but that it was difficult to coordinate when there was no counterpart to work with (interview two Heads of Cooperation, Kinshasa 2016-12-02). As one of their colleagues expressed it:

*“How do you coordinate around something, when there is no one on the other side that ever has an opinion about anything”* (interview donor official, Kinshasa 2016-12-02).

A similar account was given by a donor involved in public financial management reforms in which progress had been more or less stalled:

*“They [the government] doesn’t seem to want what we are offering them – but can’t they then just say what they want and then we can work on that. But not even that is happening, they just don’t tell us anything”* (interview donor official, Kinshasa 2015-07-01).

These representations suggest a deep frustration by the donors regarding what they see a lack of a counterpart to discuss with. Several people with insights into the donor coordination group also complained about the behaviour of the donors themselves. One individual who attended the meetings on behalf of her Head of Cooperation was disappointed by what she saw as lack of seriousness:

*“People are coming unprepared for the meetings and nobody has any questions. The executive committee is regularly having lunch together but no information is ever shared from those meetings so there is no transparency. In addition, the person at the secretariat is far too junior and has no clout”* (interview donor official, Kinshasa, 2015-07-01).

Some Heads of Cooperation raised concerns over who could speak on behalf of the donor group noting that the EU Ambassador and the Head of UNDP, who were executive members in the GCP, were not well placed, as they were diplomats representing organisations that needed the buy-in from the government. Hence, they were not seen as always taking a sufficiently critical view towards the government (interview two Heads of Cooperation, Kinshasa 2015-12-02).

In conclusion, donors are trying to coordinate themselves but this takes time and effort and few donors seemed to be willing to fully engage in it. The lack of a counterpart in the government was a major obstacle to coordination efforts, making it hard for donors to harmonise and align to government led plans.

### *Political dialogue*

The lack of coordination was compounded by a lack of high-level dialogue between the donors and the government.

The Ambassadors had their meetings with different Ministers but also they had problems with access, especially at the highest level. Kabila preferred to minimise his contacts. Some diplomats I interviewed complained that it was getting ever more difficult to gain access to him. One of them, representing one of the main donors to the country, reflected that perhaps this was not very surprising considering that those diplomats that actually had access were mainly there to urge Kabila to arrange elections, which he clearly had no interest in (interview Head of Cooperation, Kinshasa 2015-07-02).<sup>73</sup>

Another illustration of the lack of dialogue at the highest level is the political dialogue that the EU should have with the government according to the EU-ACP (Cotonou Agreement).<sup>74</sup> Article 8 stipulates that there should be regular dialogue between the government and the EU; however, the EU had encountered problems in having these meetings. There had been one in 2014, which according to one of the participants who attended, a rather strange meeting (interview Ambassador, Kinshasa 2014-12-08). The Prime Minister had, for example, attended the meeting alone, which is rare for this kind of consultation. In early 2016 there had been another one, attended by several ministers, where, according to the EU there had been a rather frank and open discussion, perhaps as Congo around this time was asking IMF, the World Bank, the African Development Bank and the EU for budget support. Another call for an article 8

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<sup>73</sup> In July 2018 he took this non-dialogue to new heights, by cancelling a meeting with the UN's General Secretary, António Guterres and the AU Chairperson Mr. Moussa Faki just before the two top diplomats were due to travel to Kinshasa (Human Rights Watch, 2018). They were expected to deliver a harsh message to Kabila, requesting him to step down.

<sup>74</sup><http://www.europarl.europa.eu/document/activities/cont/201306/20130605ATT67340/20130605ATT67340EN.pdf>. ACP stands for African, Caribbean and Pacific countries.

consultation in 2016 had been left unanswered by the government for over half a year.

Hence, making themselves unavailable seems to have been a strategy used by the very top of the Congolese administration, and it was often difficult for the donors to have high-level policy dialogue with the government. Considering that a number of decisions are taken not in the different ministries but in the close circle around President Kabila, such a lack of access matters. This strategy of avoidance is in line with the political culture of secrecy that surrounds the Congolese government.

### *Not believing in conditionality*

Considering that dialogue and coordination with the government didn't seem to get the donors very far in actively engaging with decision-makers, one might have expected the donors to resort to the use of conditionality. The use of conditionality to incentivise the government is, however, not always easy and often doesn't lead to the desired outcome, as the following example from DFID and their police programme, illustrates.

In autumn 2012 when President Kabila had been forced to sign the Addis Ababa peace accord and was severely weakened, he pledged that he would eradicate the problem of street violence in Kinshasa. The so-called Kalunas, criminal youths, had become more aggressive and were perceived as a real problem. A brutal police intervention was launched. Several extra judicial killings took place and Human Rights Watch estimated that 51 young men and boys were killed (Human Rights Watch, 2014). The UN and the international community protested loudly, which led the government to expel the head of the UN and Monusco's joint Human Rights bureau, Mr. Scott Campbell. For those donors that had been involved in reforming the police sector, the whole thing was an embarrassment and a dilemma. Should one stay or should one go? DFID had been quite pleased with the results of its police programme and felt that they had started to reach a point of mutual trust (interview Donor official, Kinshasa 2015-06-24). As a first response, they initiated a discussion with the Ministry of Interior at the highest level. DFID made two requests in order for the cooperation to continue: a) officials involved in the operation should be suspended pending an investigation and b)

an internal investigation should be undertaken and the results should be made public.

At the same time as the dialogue with the Ministry of Interior was being undertaken, DFID was working with other donors to agree upon a common response. Initially there had been good collaboration. The USA decided to suspend part of its police programme, France suspended a small programme they had and Belgium enthusiastically supported the suspensions (interview donor official, Kinshasa 2015-06-24). The EU Delegation, however, one of the major donors in the sector, didn't agree with this approach, considering that suspension would only hurt the police and emphasising that there was a need for a long-term view (ibid). In the meantime, DFID continued its dialogue with the Ministry, meeting the Minister of Interior on numerous occasions. A person closely involved in the discussions noted that the Minister didn't seem to care whether DFID continued its support or not (interview donor official, Kinshasa 2015-06-24; another donor official, Kinshasa 2015-03-20). Allegedly, the Minister had told them that Congo is a sovereign country, as is the UK, so if the UK wanted to suspend the programme it was their decision (ibid). It was not an easy decision for the UK. In the end, political considerations prevailed. 2015 was an election year in the UK and the government didn't want a story in the domestic press about them supporting a police force that was engaged in extra-judicial killings. Hence the decision was taken to abandon the project. Tellingly, the day after the UK announced its decision to suspend the programme, the EU Ambassador went out in the Congolese press emphasising that the EU stood by the police in these difficult times (Le Potentiel, 2014). Understandably this led to a frosty relationship between the EU and the UK for some time (interview donor official, Kinshasa 2015-06-24).

It is difficult to tell whether the government did care or not about the cancelling of the police programme. The fact that the programme was in its final stages might have lessened the consequences of the decision. A new project had been planned but these discussions were cancelled as a result. Governors and police officers involved in the programme had been upset about the cancellation of the programme and DFID made field trips around the country to explain its decision (interview donor official, Kinshasa 2014-12-10; donor official, Kinshasa 2015-06-

24). This was one of a few cases that I heard about during my fieldwork where a donor had actually tried to impose conditionality in one of their projects.

During my interviews I had in-depth discussions with donors, and in particular with Heads of Cooperation as to what they thought about conditionality, and only a few had a somewhat positive view of it. One Head of Cooperation asked rhetorically: *“as the government is not interested in the population, why would you put conditions?”* (interview Head of Cooperation, Kinshasa 2015-06-15). Interestingly, the donor officials that in general were more positive regarding its use were Congolese staff members.

The overall scepticism regarding conditionality that has prevailed in the international discourse on aid was observable at the country level. Heads of Cooperation expressed scepticism both due to ideological reasons that it was not right and due to concerns that it wouldn't work. They also objected to it for more practical reasons stating that they wouldn't get their programmes implemented if they imposed sanctions.

A different take was offered by one donor official, a local staff member who advocated for conditionality. As there was no political will, she thought that it could be one way to incentivise leaders. She emphasised that it would need to be done in a smart way by, for example, targeting lower levels of the administration that she believed cared more about the population. She believed that 'micro-conditionality', where local government were asked to contribute financially would also have the added value of being easier to get approval for at the Embassy level. Her experience was that if you try to use conditionality at a higher level it gets too political and the Embassy staff will tell them not to do it. She had allegedly seen this happening, not only at her Embassy, but other embassies as well (interview local donor official, Kinshasa 2015-06-09). This reflects the view that diplomats are in general more reluctant to risk their relationship with the government than people directly involved in aid delivery tend to be.

#### *Limited image management and the Government playing the sovereignty card*

As I showed in the conceptual framework, some recipient countries are using various forms of image management, by for example: i) personalisation of diplomacy, i.e. by making themselves available to the donors on a personal level;

ii) using public relations firms; and iii) engaging with media and academia in important donor countries. Congo has done relatively little in this regard. As shown above, the personalisation of diplomacy has not been a favoured strategy by Congo. I found little evidence that the government were using public relations firms or engaging with media and academia in important donor countries to any major extent before the sanctions issued in 2016 and 2017 by the USA and the EU against certain individuals in the regime. After this there seems to have been increased lobbying efforts with representatives traveling to Europe and the USA. The government has also signed a 5.6 million USD contract with an Israeli-based consulting firm which allegedly will assist in setting up meetings with senior USA administration officers and key policy makers in various Congressional Committees (The Hill Newsletter, 2017a), to seek to increase the influence in the USA (The Hill Newsletter, 2017b). In a speech by Kabila's special envoy at the US congress on 16 May 2018, he tried to portray an image of Kabila as standing for stability, peace and economic progress, by emphasising that the security situation is better today than when Kabila took over in 2001, and by highlighting the economic growth that has taken place during the last years. As donors usually like stability in a country, it was clearly a move to say that the donor community would be better off with Kabila in the lead, than an insecure future without him. It reminds about Mobutu's threat – that after me there will be chaos. Only this time, Kabila seems to lack the ability to keep the country relatively stable and conflict-free so the discourse is unlikely to work.

The Congolese opposition has been far more active in deploying 'image management' strategies. One opposition leader, Mr. Moïse Katumbi, has actively engaged with foreign media. He has also hired consultancy firms, set-up a fundraising organisation in the USA and travelled extensively to the USA, France and the UK (Reid, 2018, p. 115).

Hence, in contrast to some of its neighbours, the Congolese government has not tried to 'sell' itself to donors. Nor has it tried to portray itself as a friend to the international community by sending troops abroad,<sup>75</sup> or by being a successful

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<sup>75</sup> Congo did at one point send soldiers to the UN's peacekeeping mission in the Central African Republic. They were, however, sent back after accusations of sexual violence. Congo was consequently banned from sending troops to the UN.

case in regard to delivering poverty reduction, although macro-economic improvements have been highlighted in the discourse. The strategy instead seems to rely on having a rather aggressive discourse against the donors, highlighting its colonial past and stressing that they are now a sovereign country.

An illustrative example is how the government reacted to a criticism by the European Court of Auditors (ECA). In 2013 the ECA published a critical report telling the EU Delegation that it needed to be more demanding of the Congolese authorities. The ECA had reviewed the EU's support to key areas of governance in Congo and found that: *'While EU support is well-intentioned and achieving some results, progress is slow, uneven and overall limited'* (European Court of Auditors, 2013 p. 7). It concluded that the EU Delegation hadn't used conditionality and policy dialogue to a sufficient extent, which had contributed to the lack of implementation. The EU Delegation was criticised for not having analysed the context sufficiently and thereby underestimated the risks involved (ibid). The report also referenced high levels of corruption and the lack of effort by the government to address certain issues related to the governance agenda (ibid p. 11).

The EU Development Commissioner, Andris Piebalgs, tried a diplomatic approach highlighting positive results from EU cooperation, stressing that the country had more or less started from zero in 2002 and that development takes time. He was, however, cautious when addressing the criticism related to the EU Delegation being weak on dialogue and conditionality. He stressed, for example, the importance of having a close political and sector dialogue with the government to support mutual accountability. He also highlighted that aid needs to be predictable, particularly in a fragile state like Congo, concluding that 'while striking the good balance between policy dialogue and predictability of aid, the Commission considers that systematically using conditionality could be ineffective, or even counterproductive' (European Commission, 2013). The EU Delegation in Kinshasa tried to keep a low profile and did first not comment on the report.

Radio France International (RFI), however, which is widely listened to in Congo highlighted the ECA report in one of its transmissions. The response from the

government was immediate. The government's Communication Minister, Mr. Mende, called a press conference where he condemned the EU for accusing them of being corrupt. In a long speech, he critiqued the EU Delegation for not following the aid effectiveness agenda by not involving them in programmes and for not transferring money through the state-system (Congolesse government, 2013), thus criticizing the EU for not following aid effectiveness principles. The EU Delegation considered that both the critique from the government and from the court of auditors was to a large extent unfair (EU diplomat, Kinshasa 2015-06-15). The day after Mende's press conference the EU Delegation went out with a communication highlighting the close collaboration it had with the government and distancing itself from the ECA's conclusions (EU Delegation in Kinshasa, 2013). Hence the EU tried to tread carefully in order not to upset the government but to little avail as they were still heavily criticized in a way that seems to be a strategy by the government to keep the donors under control. This is consistent with the political strategy of misinformation and noise to discredit opponents and hide their own shortcomings that is prevalent in Congolesse politics.

Whether this kind of lashing out by the government has any direct effect on how donors engage with the government is hard to prove, but it seems at times to have worked to avoid criticism as the example above suggests.

As relationships between the government and donors have become more tense, an increasingly popular strategy by the government has been to refer to the notion of sovereignty as a way to minimize criticism over human rights abuses and the lack of progress in the election process. According to several diplomats the government was increasingly referring to sovereignty in their discussions with the diplomatic corps.<sup>76</sup> Kabila, for example, invited several Ambassadors to an audience in mid-February 2015 shortly after he had tried to change the election law and violently clamped down a popular protest. He informed them that the Vienna Convention on diplomatic relationships says that diplomats posted in a foreign country should abstain from all forms of interference in the internal affairs of the host country (Le Potentiel, 2015). The government also used the language of sovereignty in the discussions regarding the future of Monusco, where the

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<sup>76</sup> See for ex. interview Ambassador, Kinshasa 2015-06-10 and interview with Head of Cooperation, Kinshasa 2015-03-20.



government consistently demanded a reduction in the peace-keeping force, without presenting a plan on how they would take over the responsibilities themselves (interview Monusco representative, Kinshasa 2014-11-25).

The strategy of using the language of sovereignty and colonialization has had some effect. For example, when the Belgian Development Minister, De Croo, visited Kinshasa in February 2015 he held a press conference upon arrival where he criticized the government for having closed down the mobile phone network as a response to popular protests against a proposed change to the election law. This led to a diplomatic quarrel in which the government spokesperson, Mr. Mende, publicly stated (Jeune Afrique, 2015):

*“your speech in a language, Dutch, which very few Congolese master, testifies to a lack of knowledge of the fact that the world has changed since the independence of our country in 1960 and that the frame that you view Congo from, through the childish fictions of Tintin in Congo, is outdated”*

He was hence referring to the Belgian colonisation of the country, and that the government saw the speech of the Belgian Ministry as an unwarranted interference.<sup>77</sup> According to my interview with a Belgian diplomat, they had to work hard to convince Kabila to meet with the Minister of Development as had previously been planned. It was clear that she was not pleased by the behaviour of her Minister and what she referred to as the ‘war in the media’ that it had led to. She believed that he was destroying their relationship with the government (interview diplomat, Kinshasa 2015-06-15). The Belgian Minister of Foreign Affairs also went out with a positive statement a few days later noting that he had seen progress in the democratic process from his last visit (Belga News, 2015). Again, the Congolese political culture of disinformation and creating noise proved to be rather successful.

The Congolese government is also finding innovative ways to avoid pressure and resist interference from the donors. One case in point is the collaboration between the national army and Monusco – a collaboration that is not always welcomed by the regime. After the defeat of the M-23 by the national army and the UN’s special intervention brigade, Monusco and the army were supposed to work together to

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<sup>77</sup> The cartoon Tintin in Congo has led to some heated debate, due to its racial portray of the Congolese.

fight the FDLR guerrilla group<sup>78</sup> (the FDLR consists of soldiers from Rwanda accused of genocide and is perceived as a threat to the government in Rwanda). The Congolese government, who at times has been fighting the FDLR whilst on occasion collaborating with them, was stalling the operation (Vogel, 2015). The UN pushed but didn't get any responses until President Kabila suddenly announced that they were ready to move ahead and that he had appointed two generals to lead the offensive on behalf of the government (Le Potentiel, 2015). There was one tricky detail though; the appointed generals were on the UN's list of soldiers that have committed war crimes and whom the UN is prevented from collaborating with. Hence, Kabila managed to get the manoeuvre to fight (or not to fight) FDLR without the interference, and over-sight, by the UN. The UN, as anticipated, demanded that the two generals should be replaced. In reply Kabila publicly warned diplomats and UN officials against interfering in domestic affairs, such as army appointments (Vogel, 2015).

#### 4.4. Who needs whom?

Considering the strategies used by the government, some Heads of Cooperation and diplomats had started to question whether the government wanted donors there. The following quote from an Ambassador illustrates this point:

*"The most painful thing is that the regime doesn't really care about the development assistance that they receive. As a matter of fact, they seem mainly to be provoked by it. Those that do seem to care are the civil servants who are dependent on the assistance"* (interview Ambassador, Kinshasa 2016-06-10).

In a similar vein, a Head of Cooperation said:

*"Some ministries, like mining, have their own resources. It is the ministries with the least resources, such as the Ministry of Planning, that are most interested in working with the donors. For them the donors are their minerals"* (interview Head of Cooperation, Kinshasa 2014-11-21).

These sentiments were also reflected in other interviews with donors and diplomats alike and it was clear that the donors felt that the elite was neither

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<sup>78</sup> It is believed that the USA had managed to convince Rwanda to stop its support to M-23 in 2013 by promising that the UN would prioritise going after the FDLR (interview diplomat, Kinshasa 2015-06-10).

particularly interested in the population, nor in the donors, unless they relied on them directly for gaining access to resources.

Some of the government's behaviours do give rise to questions about who needs whom. One donor told me about a situation he had encountered a few years before. The German Development agency, GIZ, had at one point had their banking account frozen. When negotiating a new framework agreement with the government, the Germans wanted it to include a clause that the government should abstain from confiscating their account (interview diplomat, Kinshasa 2014-12-11). The Ministry of Foreign Affairs that was in charge of the negotiations didn't agree and decided to not sign the new contract. The Head of Cooperation regularly went to the ministry to check on progress but never got any response. As the current agreement was to expire he came under increased pressure to get a new contract in place. His superiors at HQ started to ask whether Congo really wanted their aid (ibid). It was only when the Congolese Minister of Foreign Affairs, Mr. Thsibanda, visited Germany that the contract was finally signed. Considering that Germany is a large donor to the country, it does seem odd that it took the Congolese government over a year to sign the contract. To triangulate the story, I also talked to one of the officials in the Ministry of Foreign Affairs that had been in charge of the German contract. He confirmed that the agreement had taken a long time to negotiate. According to him, though, it was the Ministry of Justice (MoJ) that had blocked the account and that there was nothing that the MoFA could do about it (interview government official, Kinshasa, 2015-06-12). Although it could in principle be true, it seems unlikely especially since problems with the Ministry of Justice had not been raised with the German Embassy.

Another recent example that emerged post fieldwork is the Congolese government's decision not to attend a UN conference in April 2018 which was intended to raise humanitarian funding for the country.<sup>79</sup> The motivation given by the government was that the UN had grossly exaggerated the humanitarian need in the country, which they said scared away possible investors (Reuters, 2018). The Foreign Minister also went out with an open threat saying that: *'Money [for humanitarian aid] has been raised. The DRC government must now be involved*

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<sup>79</sup> The Conference was co-hosted by OCHA, ECHO and the Netherlands. The aim of the conference was to raise funding for the 13.1 million people that needed humanitarian assistance. The funding gap was 1.6 billion USD.

*in its management. If not, there will be serious consequences'* (allAfrica, 2018).

To get the government on board, the UN which had in the end of 2017 classified the country according to the highest alert, agreed to downgrade the classification, but in the end it was not enough for the government who still refused to come to the meeting (Reuters, 2018).

Hence, it seems reasonable that the donors sometimes wonder if they are welcome. This has also led them to feel rather powerless in the relationship with the government, as I will show in the next section, where I will also explore why, despite them feeling powerless and unwelcome, they continue to engage.

#### 4.5. Donors without influence in Kinshasa

It was clear from my interviews with diplomats and Heads of Cooperation that they felt quite powerless in their relationship with the government. My questions as to whether donors had any influence in the country were sometimes met by laughter and always followed by accounts of how little influence the donors had. Considering that we are talking about one of the least developed countries in the world and that donors are providing a rather substantial amount of resources to the country, these statements might seem strange.

When I probed further into explanations, almost all highlighted characteristics of the government as the key explanatory factor. They stressed that there was no political will in the country and that the government wasn't interested in assisting the population. I frequently received rhetorical questions such as 'how do you help a state that doesn't want to help itself?' or 'how do you influence a predatory state?'. This seemed to be the 'million dollar' question that they all asked themselves without having found an answer. A majority of the donor representatives I interviewed were clearly frustrated as how to go about doing development aid in the country, feeling at loss and finding that they didn't get much guidance and support from their national Headquarters.

One of them expressed this by saying that:

*“There is a lot of talk about the New Deal at the country level, but how do you deliver on it when there is no political will in the country you are working with? Then there is no guidance anymore. HQ does a lot of policy papers and conceptual work. But do we need it? There are tons of papers and policies, but no practical guidance”* (interview Head of Cooperation, Kinshasa 2015-06-02).

Another Head of Cooperation expressed a similar point of view stating:

*“The Paris Declaration and the New Deal are built on some core assumptions. It builds, for example, on the assumption that you have a government which is legitimate and is committed to reducing poverty. If these assumptions hold, then they [the government] develop a plan and donors align and provide technical assistance and money. On the other hand, if these assumptions don't hold, technical solutions will do more harm than good, with bad consequences for poor people. We need a more nuanced approach on how to deal with fragile states than there is today”* (interview Head of Cooperation, Kinshasa 2015-06-18).

That Congo is not like other countries was also highlighted in some other interviews. As one senior diplomat that had working in the country for a long time and who had developed a certain level of cynicism told me that:

*“This is like a bad play, the international community pretends that this is a normal government, but it is not”* (interview diplomat, Kinshasa 2015-06-29).

A Head of Cooperation also talked about the problem of pretending that Congo was just like other developing countries, saying that:

*“It is important to see where the DRC is coming from. They come from a terribly weak base under Mobutu. But we tend to see it as just as one normal African country that is on the same level as the other countries and it is not”* (interview Head of Cooperation, Kinshasa 2015-07-02).

It was clear from the above representation, coming from four different embassies, that many donors found that Congo was somewhat different from other fragile states and that they didn't have the right tools for how to deal with it. They felt that existing policies didn't answer their questions on how to work with a predatory state and that they didn't receive sufficient support from their HQs.

Considering that donors thought they had little influence, and that the government lacked legitimacy, was there not a risk that they were being seen as complicit with the regime? As we saw in the conceptual framework, Uvin (1998) argues that in

countries where aid is substantial every move of the donors is being watched, both by the government and the population alike.

As a response, one Head of Cooperation said the following:

*“If you don’t believe it is a legitimate government and you don’t think that they want to do poverty reduction but still provide them with funding then you become complicit. It provides an illegitimate government with legitimacy. So to engage or not engage that is the question. There is a moral argument, rather than a development argument”* (interview Head of Cooperation, Kinshasa 2015-06-25).

Most of the people I interviewed didn't go as far as to see themselves complicit. However, rather few said that they were supplementing for the government in the sense of financing basic services that the government should pay for. They asked themselves how far they should go in supplementing for the government, and recognised that it might create a problem. As expressed by the same Head of Cooperation:

*“Donors are sitting at the centre of the social contract. So the government and the population can blame the donors for failures for which the government is really responsible. The government knows this and plays the game. We the donors are substituting for the government and sustaining their legitimacy”* (interview Head of Cooperation, Kinshasa 2015-06-18).

So why then are they staying? As we saw in chapter 3, most donors are of the opinion that Congo is too important to let fail. They worry about the humanitarian consequences of their leaving, and about what would happen to the neighbouring countries should Congo descend into absolute chaos. Some of these countries, such as Angola and Rwanda, are where some Western nations have close ties and don't want to see affected by the chaos that would follow from a faltering Congo. The donors have also invested a substantial amount of money in humanitarian aid and in peace-building efforts. These efforts are not sustainable if the Congolese state is not stabilised and able to provide for its population. Hence, in the donors views the state needs to be strengthened but, as highlighted by amongst other Trefon (2011), the frustration for the donors is that the state that needs strengthening is also the one that resists being built.

#### 4.6. Conclusions

The aid relationship between donors and the government at the national level has been fraught with tension that has occasionally erupted in more or less open confrontation.

As we saw in the conceptual framework, people tend to overemphasize dispositional factors when explaining the behaviour of others while stressing situational factors to account for one's own behaviour. Basically, you are bad because you are evil, but I am inherently good, although I am occasionally forced by circumstances to behave badly. This kind of attitude came out clearly in some of my interviews with donors who were continually complaining of the lack of political will and seemed to give little weight to factors such as lack of capacity when explaining reform failures. The Congolese on their side, as noted by some observers, seemed convinced that the donors are more dependent on Congo than vice-versa. This goes back to the popularly held belief that donors are in the country to profit from the wealth of the country. President Kabila has also figured out that the West often comes with empty threats and he is continuously pushing the limits to see how the donors will react. This has been obvious in the election charade over the past few years, where Kabila has often got away in his stalling of the election process and where the donors have struggled to find an effective response.

At the overall level, the government is trying to keep the donors at bay by using a variety of strategies to make them less demanding. This includes referring to international norms, including the norm of sovereignty. The country is proud, and the elite do not seem to need the donors. This attitude has probably made it less attractive for them to use fragility as a negotiation token. Neither has the country tried to 'sell itself' to the donors. It has not attempted to portray itself as a friend to the international community nor until recently, has the government tried to portray itself in a positive light overseas. Instead, the strategy of Congo has been to increase its negotiation capital by having an aggressive discourse against the donors.

As we saw in the conceptual chapter, Whitfield and Fraser had found that some aid recipients which had successfully carved out policy space despite a high

dependency on aid had often done so by centralizing aid negotiations and by limiting the donors influence over policy discussions. On the surface it might seem that Congo was attempting to do something similar. The government was, for example, keeping the donors at a distance when it suited them, such as the planning of army interventions against FDLR. Other cases, such as not communicating clearly which ministry was responsible for donor coordination and which development strategy has priority, are probably less about keeping the donors at a distance than a sign of a weak government who lacks central control over the different ministries.

Interviewing donors and Heads of Cooperation, a picture emerges of donors struggling how to respond and how to deal with a government that seemed rather uninterested in their aid. They had problems of getting a high-level dialogue going and they felt that international guidelines, such as the New Deal, didn't accurately guide them in a country where the elite seemed to lack the will to develop the country. They also felt obliged to remain in the country by a mix of self-interest and worries about what would happen if they left. Their previous strategies of dealing with countries that are predatory, such as by-passing the state were no longer seen as acceptable strategies and they were under increased pressure to build state capacity and engage with the state. Norms, as well as previous experiences of using conditionality, deterred the donors from using conditionality but ideas on other ways to create incentives were lacking.



## Chapter 5: Divergent Perceptions and Strategies in the Health and Justice Sectors

### 5.1. Introduction

In the previous chapter we saw how donors and the government engaged with each other at an overall level and how the relationships were tense. They had negative perceptions of each other and the government sought to keep donors at a distance using harsh rhetoric against them. The donors seemed at a loss as to how to react, failing to coordinate amongst themselves and being reluctant to make their aid conditional. As it became clearer in 2016 that Kabila was not going to hold presidential elections, some donors started to impose sanctions and began postponing parts of their support to the government.

In this chapter I will explore how these dynamics play out in two different sectors, health and justice. Do the same perceptions and strategies used at the overall level permeate to engagement between donors and the government in certain sectors? And did the perceptions and strategies differ between the sectors, and in that case why? The two sectors were selected in the anticipation that the justice sector is more sensitive and important to the government, having a national sovereignty perspective, than health, which is about service delivery. My expectations turned out to be true, with the government happy to leave the health sector largely to the donors. This could be observed in the low amount of government spending in the health sector, the government's willingness for dialogue with the donors, and in the Ministry of Health more or less blanket approval of donor programmes. The donors have benefited from this passing over of ownership being able to do virtually whatever they want in the sector, although it has also led to frustrations as they need a supportive national counterpart to make their work sustainable.

As the justice sector is much more at the core of the state, the government has tried to keep much closer control over reforms and has proactively tried to change aid programmes to align better with their priorities, which focus more on extending the scope of the state across the country than to rendering the justice sector more independent from the executive and legislative power centres. Whilst accepting donor support, the government has tried to keep them at arm's length, preferring

to deal with them on an individual basis. As a consequence, meetings in the donor – government coordination group, the ‘Comité Mixte de la Justice’ (CMJ), were infrequent and steering committee meetings for individual programmes were often avoided by the government, adversely impacting donors’ attempts to move programmes forward. This situation has led to deep frustrations amongst donors who repeatedly complain about what they perceived as a lack of political will by the government to reform the sector.

I will also explore the relationship between the donors and the government at the local level. This relationship is quite different as few donors have any representation at the provincial or local level. Hence, a large part of the relationship between the donors and the government is left to implementing partners. It is also at this level that the hybridity and real governance become more apparent, a factor that I will focus on more in chapter 6.

This chapter is structured as follows: I will provide an overview how the collaboration between the donors and the government restarted after the fall of Mobutu, as this is important in order to understand the contemporary aid relationship, and how it has changed over time. I will then assess whether there are overlapping or contradictory objectives between the donors and the government, paying particular attention to how ownership and political will have been perceived by donors and how it has informed their views and perceptions of each other. Thereafter, I will review the strategies that different parties have used and what consequences they have had on the outcome of negotiations. I will also briefly review relationship and engagement strategies at the provincial and district level. Finally, I will draw some conclusions linked to the conceptual framework and the lessons we can draw from my case studies.

## 5.2. The return of the donors, and their engagement with the state

After the withdrawal of aid in 1991, donor engagement restarted slowly, first in the health and then in other sectors, including the justice sector, as well. In the health sector, donors started returning in 1994 after the genocide in Rwanda, initially mainly for humanitarian work, frequently by-passing the state to provide this support. In the justice sector, donor re-engagement started from the installation of the transitional government in 2002 and had a strong emphasis on

state-building. These early beginnings had consequences for how the relationship with the government was formed.

*From humanitarian aid to state-building in the health sector*

Donors started to re-engage with Congo directly after the genocide in Rwanda, with the subsequent refugee crisis and outbreaks of violent conflicts in the east of the country.<sup>80</sup> Hundreds of NGOs were involved, which contributed to a chaotic situation. Considering the acute crisis, the support naturally came to focus on the provision of humanitarian aid and life-saving interventions. Donors mainly channeled their support to organisations such as Médecins Sans Frontières, the Red Cross and the International Rescue Committee (IRC), whose operations were guided by the humanitarian imperative of saving lives. These organisations provided local health centres with much needed medicines, equipment and staff members (Waldman, 2006, p. 9). Some even established their own health centres, thereby creating parallel systems and substituting for the state. The reinforcement of the health system had low priority both amongst the donors and the INGOs. Little attention was paid to issues such as the overall regulation of the health sector, data-collection, financing of health inspectors and support to provincial hospitals, i.e. things necessary for the effective functioning of a health system, but not for saving life in the immediate future. As a consequence, management capacity in the health system weakened and the critical link between the health centres, the health zones and central management, which was behind Congo's earlier successes with community health care, further eroded. Instead hierarchies were by-passed and disrupted in order to distribute aid as quickly as possible. Consequently, gaining an overview and creating a common vision between health providers became increasingly difficult.

As the humanitarian crisis continued and severe health crises such as outbreaks of measles, yellow fever, and Ebola kept re-occurring, the need to strengthen the overall health system and to engage with the government became increasingly evident. More donors started to supplement their access to health care projects with support to local health authorities. This nascent collaboration was facilitated by three factors: 1) the Ministry of Health's adoption of a sector development plan;

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<sup>80</sup> At least 1.2 million refugees arrived in the Kivus (Trefon, 2011, p. 19).

2) a functioning thematic coordination group in health; and 3) the establishment of an inter-donor coordination group.

The national health policy and the health strategy developed by the Ministry of Health in 2009 (and updated in 2016) continues to provide a profound analysis of the challenges in the health sector.<sup>81</sup> The policy has been widely praised, with a former UNICEF regional health expert considering it to be one of the best health strategies in the region (UN official, Kinshasa 2015-03-30). Implementation of the policy has, however, been limited by weak capacity at the Ministry of Health and limited enforcement at the provincial and local levels (DFID, 2012b; IMA, 2013, p. 3). The establishment of a coordination group between donors and the government also was intended to facilitate collaboration. The group, chaired by the Minister of Health, is frequently highlighted by donors as a model for other sectors. Donors also became more organised with the establishment of an inter-donor coordination group called GIBS (Groupe Interbailleur de la Santé) (GIBS, 2014a). The chairmanship of the group circulates between the members and the work is facilitated by a small secretariat which makes it more formalised than many of the other donor coordination groups in the country (GIBS, 2014b).

The combination of the above-mentioned factors led to some important improvements in the collaboration. The donors, for example, pledged to align with the government's national health plan and promised to adhere to the principle, advocated by the government, that there should be only one donor with a comprehensive support programme (called 'appui global') per health zone.<sup>82</sup> These two principles - one donor per zone following the minimum standards set by the government - were important steps forward in facilitating a joint approach between the parties. They also made the administration for the health zone management teams easier as in principle there should be only one major donor to deal with. According to my interviewees, these principles were in general adhered to, although there have been instances where more than one donor has

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<sup>81</sup> The policy was updated in 2016 by the Ministry of Health.

<sup>82</sup> The 'Appui Global' elements include essential medicines, infrastructure rehabilitation, in-service training, equipment, support for supervision, water and sanitation, solar energy equipment, community empowerment and operations research (Sida, 2013b, p. 1). To this can be added vertical programmes, such as vaccination programmes, support by, for example, UNICEF, or medicines distributed by the Global Fund.

been involved in a health zone and, perhaps more seriously, around half of the health zones do not receive any donor support at all (DFID, 2012b).

With the increased interest of the donors in engaging with the state and the support structure that was put in place for increased coordination in the sector – guided by the national health policy – the collaboration gained impetus and led to improved relationships between donors and the government in the health sector.

#### *Focus on strengthening the state in the justice sector*

By contrast, donor re-engagement with the justice sector started during the transition period in 2002, and hence much later than in the health sector. Initial support was focused on transitional justice programmes often initiated by international organisations, such as the International Centre for Transitional Justice (ICTJ). Support was, however, mainly focused on strengthening the formal justice system, through capacity building and improving the functioning of the system. Donors saw legal reforms as a key area to address in order to support the country's development. By supporting state-building in the justice sector, the donors hoped that they would contribute to: i) democratization (through the separation of powers); ii) respect for human rights; and iii) the rule of law (Vircoulon, 2009, p. 270). Donors put high hopes and expectations on the formal justice sector, and there were no attempts to by-pass the state as in the health sector. Considering the major role that the customary justice system plays in solving conflicts, donors had ample opportunity to provide support to other actors. However, for reasons that I will explore in chapter 6, this was not seen as a feasible alternative.

In the early days of the re-engagement there was enthusiasm, with Congo seen as a 'good student' by the international community (Vircoulon, 2009, p. 270). The optimism was not unfounded; elections were being held and decisions on reforms were taken at an impressive pace. For example, a Constitutional Court was established and a new structure and hierarchy of courts was decided upon and enshrined in the new constitution. Initially there was a good dialogue between the donors and the government, and a coordination group, the 'Comité Mixte de la Justice', was established in 2004. In addition, there was a coordinated assistance

by the international community who cooperated well together (ibid p. 92-93). Hence, everything seemed to be set for successful cooperation.

However, the relationship soon deteriorated. Reforms that the government had promised to undertake stalled. After an initially positive start, the donor - government coordination group never became fully functional. Meetings, to the extent that they were taking place, were held infrequently (Teikilazaya et al, 2013b p. 29; interview government official, Kinshasa 2015-05-28). The road map for justice reforms developed by the government in 2007 soon became obsolete and almost forgotten (Ilac, 2009, p. 25), and it was not used by the government as a guiding tool for reforms (government official, Kinshasa 2015-05-28; EU, 2014b, p. 13). This led to a lack of strategic direction, which made it difficult for donors to know what to prioritise in their reform programmes (government official, Kinshasa 2015-05-28; multilateral donor, Kinshasa 2015-03-30). In addition, donors, to a large extent, failed to coordinate themselves despite the existence of the inter-donor coordination group. This failure to coordinate was often blamed on the government for not giving clear directions. However, as I will show, the donors were partly to blame as well.

### 5.3. Contextual factors framing the negotiations: Perceptions, political will and ownership

In order to understand the different trajectories taken in the two sectors, it is important to understand and unpack the motivation of the different actors and what they wanted to get out of the negotiations, as well as their perceptions and their relationships with each other. I will put a special emphasis on the donors' perceptions of ownership and political will as these tend to influence the perceptions the donors form of the government. In addition, I will also explore if there were some norms that influenced the behaviour of either the donors or the government.

#### 5.3.1. Perceived lack of ownership in the health sector

People who had been working for a long-time in the health sector, both for the government and for international organisations, confirmed that the relationship had improved considerably over the last decade. This was to a large extent

attributed to the aforementioned conditions, namely i) increased realisation by the donors of the need to build the capacity of the state; ii) a health sector policy; iii) a donor-government coordination group; and iv) the establishment of an inter-donor coordination group (SRSS, 2009).

Policy documents such as the government's policies and the donors' strategies confirm a significant overlap between their interests and objectives. The national health policy, for example, stresses the need to i) revitalize and strengthen the health zones, ii) strengthen governance and leadership; iii) reform human resource policies; and iv) strengthen partnerships. These are all objectives and reforms that the donors also wanted to see. That there is such a strong overlap is perhaps unsurprising as the policies were developed by the government in cooperation with the donors during the transition period.

Hence at the policy level, there was some alignment regarding goals and objectives. A major disagreement was – and remains - how the sector should be financed, with the government insisting on user fees, whereas donors want the government to finance a larger part itself. Regarding the implementation and the design of individual programmes, the weak capacity of the state and patrimonial system often leads to a separation of interests between donors and public health officials. This can, for example, be seen in the resistance at different levels within the administration to registration of health workers. The absence of an accurate number allows some individuals to benefit from these 'ghost-workers' to whom salaries are being paid despite the fact that they do not exist. Hence, even with a broad alignment on the need for reform of the health sector, disagreements on how the reforms should be carried out remain.

#### *Donors' perceptions of political will and ownership*

There was a lot of discussion among donors regarding political will and ownership. All of the representatives I interviewed were of the opinion that the central government or more precisely the President, the Prime Minister and the Minister of Finance who are the key figures that decide the state budget, do not care about the health sector. This perception was to a large degree based on the low budget allocations to the sector. Although the national budget had increased in absolute terms, the proportion allocated to health had remained more or less

the same since 2006, equating to 4.9 % of the total budget in 2016 (Ministry of Budget). Some believed that the large number of donors involved in the health sector made it easier for the government to avoid responsibility. They noted that in the education sector the government is spending more of its own resources: in 2016 the amount allocated to education was 12.5 %. The reason might be that the government sees education as a more 'productive' sector to support (Ministry of Budget). Another plausible explanation is that the donors through the Global Partnership for Education (GPE) have put pressure on the government to increase the national budget for education as a condition for their support to the sector. Two of my interviewees mentioned that the Prime Minister often talked about the education sector, but less often the health sector (interview donor, Kinshasa 2015-07-07 and interview donor, Kinshasa 2015-03-12).

Interestingly, donors' perceptions of the Ministry of Health, and the Minister himself, were somewhat more positive.<sup>83</sup> Several donors genuinely believed that the Minister was committed to carrying out reforms. The same conclusion was drawn in USAID's Cooperation Strategy for 2015-2019 which states that: 'The Minister of Health is demonstrating leadership not seen for a long time within the government' (USAID, 2014a, p. 3). These perceptions were based on reforms being undertaken within the Ministry to reduce the number of departments, the successful handling of the Ebola crisis in 2014 and by the rather drastic reduction in under-five mortality rates.<sup>84</sup>

Despite the fact that the government had made some progress and that the Ministry had developed a well-received health policy and strategy, overall ownership was considered to be weak. Several donors and CSO representatives considered that an aid dependency made it difficult for the Minister and staff within the health sector to take ownership and to provide guidance and leadership. For example, one CSO representative noted:

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<sup>83</sup> The Minister, Dr. Felix Kabange Numbi Mukwampa was the Minister of Public Health from 2012 until 2018, when he was replaced in a government reshuffle by Dr. Oly Ilunga Kalenga.

<sup>84</sup> Then later also in early 2018. In August a new outbreak of Ebola happened in North Kivu. This is the 9<sup>th</sup> Ebola outbreak in the country since 1976 (The Economist, 2018c). This outbreak has been much harder to contain as it is in North Kivu, which is a more densely populated area where conflict is still ongoing.



*“There is some political will, but everyone has to think about themselves first and foremost. You can have the will, but you need the funding as well”* (interview CSO representative, Kinshasa 2015-04-02).

The difficulty for the Minister to say no to donor funding was rather crudely expressed in the following way:

*“The Minister dances to the pipe of the donors, and just wants to maximise the funding he can get from the donors”* (interview multilateral donor, Kinshasa 2015-07-06).

Donors also expressed frustrations regarding the lack of ownership taken by the Ministry, as they felt that they had nobody to give them guidance on policy options, as suggested by an INGO representative, who had been working closely with the Ministry:

*“It is difficult to strengthen ownership in the country. The government take what they can get and have few or no comments on the programmes you suggest to them. Although sometimes they have views on which health zones they would like us to support, but that is it”* (interview INGO representative, Kinshasa, 2015-04-09).

In a similar vein, donors also complained that their discussions with the Ministry tended to focus on technical details, and what was in it for themselves as individuals rather than what would be beneficial from a health system point of view. As one interviewee dealing with the Ministry of Health on a regular basis said:

*“The people at the Ministry only seem to want to discuss primes and salaries with us. It is very understandable that this is the main concern for them, but it would be nice if people would like to discuss something else with you as well”* (interview donor official, Kinshasa, 2015-04-21).

Hence, as these representations show, there was an understanding as to why it might be difficult for people in the health sector to take ownership and to get involved in discussions on policies and strategies when staff do not feel they are properly paid. At the same time, however, donors feel left without a partner in trying to find a solution for health care in the country.

#### *Donors having it their way*

This dependency on donors and the lack of ownership it leads to sometimes works to the donors' advantage as they can more or less suggest the approaches

they want without meeting any serious resistance. This was illustrated by one donor representative who said:

*“People joke about the Minister of Health and say that the Ministry never says no and doesn’t refuse anything. If one part of the Ministry says no to your approach you can always go to another one and get it approved. It is pretty sad that it is like this, but it has been like this for a long time and it is understandable and rational in an underfinanced system”* (interview multilateral donor official, Kinshasa 2015-07-07).

As illustrated by this point, repeated by other donors involved in the sector, there is an understanding, and even some sympathy, that the Ministry did not have the resources to be able to say no. At the same time, it was used by at least some donors to push through things that the Minister was hesitant about. One such example is performance-based financing which the UNICEF and the World Bank promoted in 2013. According to one of my interviewees who had been closely involved in pushing the reform through with the Minister, the initiative had first met with resistance from both the Minister and from other donors, such as DFID and IRC, as they were afraid it would have a distorting effect with health workers focusing on some health indicators in disregard of others (DFID, 2010, p. 2, 2012b, p. 19; interview donor official, Kinshasa 2015-07-07). However, after some time, the Minister agreed to go ahead despite continued protest from some donors. My interviewee concluded the story by stating that: *“the government is not stuck in ideological thinking”* (interview donor official, Kinshasa 2015-07-07). One might, however, also see it as an example of where the Minister knew that if he continued to resist the approach, the Ministry might very well lose the financing. A risk that he couldn’t afford to take.

Hence, in conclusion the donors were frustrated at not having a stronger and more visionary counterpart to deal with, but on the other hand profited from it by pushing through the approaches they preferred.

### *The Government’s ambivalent perception of the donors*

We have now seen what the donors thought about the government, but what was the view of the government towards the donors in the health sector? Government officials acknowledged that coordination and dialogue with the donors had improved and there was recognition that donors made positive contributions to the provision of health care. However, the by-passing of the government, despite

a stronger focus on state-building, still happened and unsurprisingly upset the government as the statement below from a government official in South Kivu illustrates:

*“We are not happy with international partners who come to support the health system in the DRC, but who by-pass the Ministry of Health in order to invest directly at the local level. That resembles someone that enters your house and who installs themselves in a corner to do something without involving you or informing you about it. What results will that have?”* (Ministry of Health official, quoted in Integrity Report, 2014, p. 13).

Government officials I interviewed also expressed frustration at donors’ failure to align to the government’s plans. As one senior civil servant at the Ministry of Health put it:

*“Harmonisation and alignment is a problem. Although everyone in principle supports the PNDS [the government’s health plan] - it is at the level of implementation that the donors are doing their own things. Some donors have more difficulties than others to align. There is really a lot that remains to be done in this area”* (interview government official, Kinshasa 2015-05-28).

Another government official expressed a similar frustration stating:

*“Donors’ inputs in the management of the health sector are laudable, but this does not give them the leeway to do whatever they like, as some do, they should not be taking political decisions on behalf of the state”* (interview – in Bwimana, 2017, p. 1481).

These representations show frustration with what the government feels is undue external interference and lack of respect for Congolese sovereignty.

That said, the extremely low budget allocated to health care indicates a lack of prioritisation by the government, particular in areas where donors’ and INGOs’ programmes are strong, as this representation from a provincial government official in Goma illustrates:

*“There is no need for us to intervene in those districts as Médecins Sans Frontières is already operating in those areas”* (recalled by an UN official in Goma, 2015-05-12).

Considering the enormous needs and the almost non-existent budget it is easy to understand the government official. Why use scarce resources when someone else is willing to pay?

As we have seen, the interactions between donors and the government are not always smooth. From the state officials' point of view, donors have the upper hand with the perception that donors imposed their views, and too often were simply by-passing and ignoring the government.

### **5.3.2. Tensions and conflict in the justice sector – with the government keeping control over justice reforms**

In the health sector we saw that the government seemed relatively content for donors to substitute for them, although it led to resentment amongst staff in the health sector. But what was the experience in the justice sector? Was it the same there – or did the government have other ambitions? What was the dominant perception amongst the donors and the government?

#### *Divergent objectives in the justice sector*

Considering the similarly low budget allocations to the justice sector, one could think that the government would be happy to have donors substitute for them. There was, however, not the same level of tolerance for having the donors in the driving seat when it came to reforming the justice sector with deeper, more profound differences between the donors and the government.

As we saw in section 5.2, donors' objectives for supporting justice reform were focused on strengthening the rule of law, democracy and respect for human rights. These priorities have remained more or less the same since the transition period. For example, Sweden's Development Cooperation Strategy for DRC 2015-2019 stresses that: *'Rule of law and respect for human rights are essential in order to establish democratic governance in DR Congo'* (Swedish Ministry for Foreign Affairs, 2015, p. 7). Likewise, the EU National Indicative Programme for 2014-2020 highlights the need to: *'improve access to a transparent, independent, impartial and efficient judiciary system, that protects human rights'* (EU, 2014a, p. 17).

The government seems primarily interested in building the visibility of the state through the construction of court houses and prisons (Minister of Justice, 2015). They were also, at least partly, interested in training judges to work in the courts, as seen in the appointment of 2,000 new judges in 2010 and 2011 (Gopa

Consultants, 2016, p. 45). This was partly motivated by a desire to limit the influence of customary chiefs and to promote a modern vision of the state. The government prioritised the introduction of OHADA,<sup>85</sup> a system of business laws and implementing institutions adopted by seventeen African states aimed at improving the business and investment climate in the region. In a speech the Minister of Justice re-enforced the need for more training of judges on OHADA rules and regulations (Minister of Justice, speech in Goma 2015-05-12). Considering the government's focus on economic development, the interest in the business climate seems logical.<sup>86</sup>

Other reforms, especially those that related to making the justice system more independent were, however, less popular. For example, reforms that intended to render judges more independent of the state were resisted by both the Parliament, the Government and the Ministry of Justice. Although the responsibility for appointing and disciplining judges has finally moved to a separate body, the 'Conseil Supérieur de la Magistrature' (CSM), there are still several obstructions to the CSM's independence (Tekilazaya et al., 2013a).

The harmonisation of objectives and policies between the donors and the government was made more difficult with the absence of a national political justice reform plan. A work plan had been developed in 2007, followed by a road map in 2008, but according to both donors and staff within the Ministry of Justice it was not being used. Donors had been pushing the government to develop a new policy, but it was only in April 2015 that a national conference, 'Etats Généraux', was held that led to the establishment of a working group involving donors and some foreign consultants financed by the donors to develop a new plan that was eventually ready in early 2017. The plan was intended to facilitate dialogue and discussions between the donors and the government but with the worsening political situation in the country justice reforms have been stalled ever since.

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<sup>85</sup> Organisation pour l'Harmonisation en Afrique du droit des affaires.

<sup>86</sup> This is not to say that much progress has been made. In the World Bank's ease of doing business index the country was ranked of 178 out of 183 in 2012 and as 182 out of 190 countries in 2018 (Solf, Weltbank, & International Finance Corporation, 2012; World Bank, 2018).

### *Donors' negative perceptions*

The lack of interest within the government to move forward with justice reform caused frustration amongst donors and to a rather difficult relationship between donors and the government. Most donors that I interviewed considered that there was no political will to address problems in the justice sector, as illustrated by one of my interviewees:

*“Political will – that is the whole problem. The country has competence and it has money. The leaders understand the problems, but it is the lack of political will that is the problem”* (interview with a group of three donor officials, Goma 2015-05-15).

Similar viewpoints were repeated by other donors, both that there was a lack of political will and that the problem was not a lack of capacity. The perceived lack of political will manifested itself, according to the donors, in the following factors: a) the slow implementation of reform initiatives, b) the low national budget for the justice sector, and c) the reluctance to update the government's policy for justice reforms. The root cause for this according to most of my interviewees was that the government wanted to retain control of the sector, as an independent justice system would be a threat to the regime. Surprisingly, there seemed to be limited appetite amongst donors to learn more about where exactly the resistance came from and how it could be overcome. The Swedish Embassy that was involved in the PARJ and Uhaki Safi programme had, at one point, initiated the idea of undertaking a power analysis of the sector in order to identify the bottlenecks to reforms. This idea had however apparently been discouraged by the other donors involved in the programme and was never carried out (interview donor official, Kinshasa 2015-02-24).

Despite recognising that there were deep-rooted political reasons for the government to move forward with reforms, one interesting finding was the extent that donors' perceptions of the sector seem to have been largely based on individual, rather than systemic, issues. Since 2008 there have been three different Ministers of Justice that the donors have dealt with. Each one brought his/her own challenges from the donors' perspective. Mr. Luzolo Bambi was Minister of Justice between 2008-2012 when the EU established its two justice programmes. He was seen as a rather grey figure and the donors were

discontented with the pace of reforms. The relationship was relatively tense, but there were no open conflicts (interview donor official, Stockholm 2015-08-10). When a new Minister, Mrs. Wivine Matipa, was appointed in 2012, the donors were initially positive. However, it did not take long for the relationship to sour, especially between the EU Ambassador and the Minister where disputes over the direction of the programmes apparently soon turned personal, with numerous accounts of open rows between them. The Minister was known for asking new consultants brought in by the programme as to what exactly they were bringing to the table, except for getting a high salary (interview donor official, Kinshasa, 2016-11-17). This is part of a larger story, where government officials understandably often resent the use of consultants, whose salaries are several times higher than those of government employees.

The Minister, according to one of her close advisors, felt badly treated by the EU Ambassador. Mrs. Matipa felt the Ambassador had been disrespectful and effectively undermined her authority in asking her to implement reforms that she had not signed up to and did not fully agree with (interview former advisor to the Minister, Kinshasa 2015-07-07 and 2016-11-18). She seemed to have taken a softer approach towards people in the Swedish Embassy, who reportedly had a somewhat smoother relationship with the Minister than the EU Ambassador (interview donor official, Kinshasa 2015-02-24; interview donor official, Kinshasa 2015-02-23).

When a new Minister was appointed at the end of 2014, there was palpable relief in the donor community. Mr. Alexis Thambwe was a lawyer and a political veteran. The fact that he was also a millionaire and senior political figure was seen as positive. The EU had another reason to be pleased: the new Minister was the father of the head of COFED,<sup>87</sup> which is the EU Delegation's main counterpart in the government (interview donor official, Kinshasa 2014-12-11). They believed that this connection would smooth the relationship and make it easier to move reforms forward (ibid).

The relationship did indeed improve, with Mr. Thambwe promptly extending the EU programmes, and joint strategic programme meetings were convened

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<sup>87</sup> Cellule d'appui à l'Ordonnateur national du Fonds Européen de Développement en RDC.

(interview implementer, Kinshasa 2015-05-27). The government also decided to proceed with developing the aforementioned strategic plan for the justice sector. The dialogue and the relationship significantly improved. One of the implementers lyrically described how the relationship had changed:

*“We went from hell to heaven! The former Minister just called us when she wanted to have a go at us, while he [Mr. Thambwe]), calls us on a regular basis to discuss the implementation of the programmes”* (interview implementer, Kinshasa, 2015-05-27).

While the relationship between the donors and the government improved, the personal conflicts with Mrs. Viviane and the initial unabated optimism for Mr. Thambwe indicates that many of the donors seemed to have forgotten that there were also deeper structural reasons as to why the donor-financed programmes were not being fully implemented. Instead, the Ministers became seen as either the main obstacle for reforms or the main guarantee for success. As one seasoned expert working at the EU Delegation told me:

*“Many people at the EU-delegation are really happy that there is a new Minister arriving, but I think they are fooling themselves. The problems in the justice sector are structural and are not just dependent on an individual”* (interview donor official, Kinshasa 2014-12-05).

As she rightly pointed out, the donors had been having a difficult relationship with Mr. Luzolo Bambi as well. The donors failed to look at their own actions and attitudes to see how they could improve the relationship. They ignored Mrs. Matipa's points about foreign experts not always having the necessary skills, even though many donors and implementing agencies recognise this (interview donor official, Goma 2015-05-10; interview implementer, Kinshasa 2015-03-12). Nor did they seem to fully accept that some delays to programmes were a result of complicated EU procurement rules and difficulties of the implementing agencies to find staff, instead putting all the blame on the Minister.

Just as the seasoned EU expert had predicted, the good relationship did not last. It soon became apparent that the new Minister was more susceptible to political pressure than the previous one (interview Head of Cooperation, Kinshasa 2015-02-24). As the country was moving towards elections, Mr. Thambwe became one of Kabila's closest allies. The justice sector became an important tool for keeping Kabila in power, for example, by prosecuting opposition members and controlling



the constitutional court. As a consequence of this instrumentalization of the justice sector, a planned EU programme for the justice sector, was postponed.

As seen above, the former Minister, Mrs. Matipa, felt that the donors were imposing themselves, and there were also concerns within the Ministry regarding what they saw as lack of harmonisation amongst the donors and the lack of alignment to the government's plans as indicated by this high-level civil servant:

*“Basically, the donors do just what they want to do. They do not align, and they impose themselves on us. They are all gathering in the East. I don't understand why they are doing that. There is poverty in the whole country. There are needs in the whole country...They all do the same thing, they should harmonise themselves”* (interview government official, Kinshasa 2015-06-05).

He added though that the collaboration between the EU and Minister Thambwe was working acceptably (*ça va!*).

#### 5.4. Engagement strategies

As I have shown, the government takes very different standpoints on the two sectors. In the health sector, the government seems more or less happy to let donors lead despite some concerns, whereas in the justice sector the government seems determined to stay in control. In this section I will show how these different viewpoints and objectives translated into very different engagement strategies by the government.

I will briefly outline some of the key issues of contention between the donors and the government in each sector, followed by a more detailed account of engagement with a DFID health sector programme (ASSP) and two justice programmes (PARJ and Uhaki Safi). When appropriate, I will make reference to other donors' health and justice programmes. I will analyse the establishment of the programmes, to provide an indication of the involvement of different actors, the ownership of the programmes and what different stakeholders wanted to see achieved. I will then examine the strategies each actor used to get the programmes implemented in a way that aligned to their interests.

#### 5.4.1. Strategies deployed in the health sector

Below I will highlight some of the key issues of contention in the sector, including the donors' failure to increase the aid budget, the lack of unity amongst the donors that to some extent limits their influence, and the discussion about sector budget support.

##### *Trying and failing to increase the health budget*

The donors tried to lobby the government to address one of the root causes of the weak health sector, namely the low level of financing by the state. The donors that were heavily engaged in the health sector, such as DFID and UNICEF, regularly raised the funding situation in their dialogue with the Minister of Health (interview donor official, Kinshasa 2015-03-23, and donor official, Kinshasa 2015-03-12; DFID, 2012a). In addition, the donors involved in the GIBs (the inter-donor coordination group) produced an annual policy dialogue paper ('note sectoriel') that highlighted issues that they wanted to raise with the Minister of Health which always included: i) the need to raise the national health budget, and ii) the need to increase the level of budget execution (interview donor official, Kinshasa 2015-04-21, GIBS, 2013, 2014c).

However, as one of my interviewees noted, it was not especially useful to apply pressure at this level, as the Minister was not perceived to be the obstacle (interview donor official, Kinshasa 2015-03-23). On the contrary, he would most likely have been pleased to see his budget increased as it would enhance his power. The budget is determined by other actors as we saw earlier, such as the Minister of Budget and the Prime Minister, and donors to the health sector had limited interaction with them. The Ambassadors and the Heads of Cooperation should have raised the health sector issues in their high-level dialogue with the government but more pressing issues were usually on the agenda, such as the various conflicts in the country, security sector reform, and the macro-economic situation. In a country with so many challenges as Congo, health was not on the top of the agenda, neither for the donor community nor for the government.

The health donors also felt constrained not to use conditionality as a means to force the government to increase the budget, as the following statements from donors illustrate:

*“The donors are trapped between pest and cholera. If you stop the support people will die, but the government will still not change”* (interview donor official, Kinshasa 2015-07-06).

*“How can you be tough on a government that has one of the worst health indicators in the world?”* (interview donor official, Kinshasa 2015-06-01).

Hence, donors were afraid of the consequences that a withdrawal of aid might mean for the population.

### *Lack of unity amongst the donors*

A lack of agreement amongst donors on health sector reforms was also apparent from interviews I conducted. Several interviewees who took part in GIB meetings said discussions rarely focused on strategic issues such as the level of health financing and policies. Instead they focused on what some referred to as endless discussions around technical issues such as the harmonisation of payments of top-up salaries and per diems.<sup>88</sup> One interviewee noted that donors often were more focused on the implementation of their own programmes and were less interested in hearing about the government's priorities or coordinating their programmes between themselves (interview donor official, Stockholm 2015-08-11). Another interviewee added that:

*“The problem is that donors’ think out things on their side, without involving the government”. In addition, many donors have a specific ideology that they are pushing for such as performance-based financing or whether it should be an insurance-based system or not”* (interview donor official, Kinshasa 2015-04-21).

Many of the donors tried to push for the system that they had in their own country, which was one of the major reasons why they did not manage to coordinate themselves better. Belgium, for example, wanted an insurance-based system and DFID a public-sector financed health care system.

### *Health sector financing - strong resistance towards using sector budget support*

Most of the funding for the health sector in Congo is off-budget, meaning that it is not reflected in the government's budget, and most donors have their own implementation mechanisms and modalities, due to concerns about the capacity

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<sup>88</sup> See for example, interviews with one donor official in Kinshasa 2015-03-12, another donor official, Kinshasa 2015-04-21; and finally, an interview with donor official, Kinshasa 2016-11-25.

of the government to handle funds and the high risk of corruption. However, both the Paris Declaration on Aid Effectiveness and the New Deal stress the use of country systems as a way to increase ownership and sustainability. In line with these principles headquarters staff at the EU wanted the EU Delegation in Kinshasa to provide sector budget support. A high-level delegation from EU Headquarters visited Kinshasa in 2014 to meet with the Heads of Cooperation from the EU countries to discuss the idea. The Heads of Cooperation argued strongly against it, noting the fiduciary system at the Ministry was not strong enough and that it would send the wrong political signal to the regime that was demonstrating more and more authoritarian tendencies (interview donor official, Kinshasa 2015-02-24). Donor representatives based in-country are often considered more lenient towards the host country as pointed out by, amongst others, Brown (2011) and, on that basis, it might have been assumed that they would have been more favourable towards providing sector budget support. However, 'front-line' workers in the donor community locally are also the ones who deal with the counterparts on a daily basis and notice first-hand the low capacity and the high levels of corruption and vested interest in the sector. In the end it was decided that there would be no sector support, at least not for the time being.

### *Negotiating the ASSP programme*

In line with the overall thinking amongst the major donors, DFID wanted to change their support to the health sector in 2011. Their previous programme had been a mix of humanitarian assistance and a programme focused on free access to health care. It had been deemed too expensive and as not providing a long-term sustainable solution, with a dependency on external financing (interview donor official, Kinshasa 2015-04-21). There was also an impression that DFID was building strong International NGOs rather than a strong government health system (DFID, 2011b; interview donor official, Kinshasa 2015-05-20).

DFID wanted to move towards an approach that better supported the development of the health system and its institutions, while at the same time maintaining the service delivery approach (interview donor official, Kinshasa 2015-05-21; DFID, 2011b). Working more closely with national and local FBOs

was considered to provide a more sustainable way forward than working with international organisations (DFID, 2012a, p. 3; interview donor official, Kinshasa 2015-05-20). An American faith-based organisation, IMA, with deep roots and contacts with FBOs in Congo was selected to be the consortium lead for the new programme. DFID also decided it would no longer support free health care, which the government had been opposed to, although special subsidized rates for children under five and pregnant women would be applied (DFID, 2010, p. 2, 2012a). Both of these moves were welcomed by the Ministry of Health. The Ministry had long opposed free health care that they considered to be unsustainable and leading to over-use of scarce health services (DFID, 2010, p. 2; USAID, 2006).

DFID had worried that the government would object to FBOs being the main implementing partners and that they [DFID] would be told to de-prioritise health zones managed by FBOs, which had happened to other donors in the past (DFID, 2012b, p. 26; interview donor official, Kinshasa 2015-04-21). This as alternative service providers are sometimes perceived as a threat to the authority of the state as we saw in chapter 2. However, the government accepted the new approach, and officials at the Ministry of Health told me that they considered the FBOs to be part of the government (interview Ministry of health, Kinshasa 2015-03-17 and 2015-04-23).

In setting up the ASSP programme, DFID involved the government in the discussions, but kept many key decisions to itself. The government was, for example, not involved in the tendering process for the consortium lead or in the selection of provincial implementing partners or the technical partners that were included in the consortium. The Ministry of Health was not involved in the selection of health zones although DFID maintained a close dialogue with the Ministry, who also participated in all of DFID's meetings with provincial and health zone leaders. One DFID official interviewed said that it would have been irresponsible for them to let the Ministry have a say in the selection as they would come under severe pressure from provinces and health zones politicians and leaders who wanted to be included in the programme. Hence, there would have

been no guarantee that the support went to the places most in need (interview donor official, Kinshasa 2015-04-21).<sup>89</sup>

DFID's engagement strategy with the government seemed to have been quite successful. When asked who had been responsible for selecting the health zones, I was told by a senior government official that it was the Ministry that had made the decisions (interview government official, Kinshasa 2015-04-23). My interpretation is that they quite naturally want to be in control and perhaps felt somewhat humiliated by the lack of ownership. As a consequence, they were keen to give the impression to an external researcher that they were the ones deciding. However, this might partly be because to some degree they had felt involved in the decision. My impression during the fieldwork was that there was indeed a very close collaboration between DFID, IMA and the Ministry. This impression was confirmed by a senior person at IMA who, through his many years of working in Congo, had never experienced such a close interaction between a donor, the implementer and the Ministry. He was convinced that this was part of the programme's success (interview implementer, Kinshasa 2015-07-06).

During my fieldwork I also observed in practice that it was not wrong of DFID to assume that there might be pressures on the Ministry regarding which health zones to engage in. When I was travelling with the local implementer in the former Kasai-Occidental province, I observed the extraversion strategies being used, in this case by the provincial government. Sitting in the car with the implementer I overheard how he, politely but firmly, told a person that he was not in a position to give that person a car. Afterwards he explained that it had been one of the provincial Ministers, who had requested that some cars from the ASSP programme should be donated to some specific villages. The country was gearing up toward local elections (that in the end were never held) and the Minister seemingly wanted to ensure the support from these villages. It was interesting to note was that it was not even the provincial Minister of Health who called, but the Provincial Minister of Justice. According to the implementer, he received similar calls on a regular basis (interview implementer, Kananga 2015-04-16). This small

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<sup>89</sup> The provinces that were chosen were provinces where the DFID's former health programme had been operating. The health zones were selected according to a list of health care indicators.

episode gives an indication as to what kind of pressures implementers can come under.

The close cooperation between the implementer, Ministry and donor could also be observed in the regular steering group meetings for the programme. I had the opportunity to participate in one of the quarterly meetings (26-27 March, 2015) and one of the annual meetings (6 June, 2015). The meetings were well attended with government officials from different provinces represented; and included frank discussions on the challenges encountered.

The main discontent between the government and DFID, which was observable at the quarterly meeting I attended and in my discussions with staff at the Ministry of Health, concerned the capacity strengthening component of the programme, the so-called RCI Component (Renforcement des Capacités Institutionnelles). The objective of that programme was to strengthen the central Ministry of Health in its stewardship role (DFID, 2012d, p. 1). This component was attractive for the Ministry which received very little donor support. This part of the programme was added late in the process and some of the involved donor officials believed that the component had been added to 'buy' the support of the Ministry for the programme (interview donor official, Kinshasa 2015-03-23; donor official, Kinshasa 2015-05-21). There were disagreements both within DFID and between DFID and the government on what the funding should be used for. The government had developed a list, but DFID removed most items which were seen as recurrent costs, such as office equipment (interview government official, Kinshasa, 2015-03-17; interview donor official, Kinshasa 2015-03-23). At the end of my second field visit I was told that IMA had come to administer most of the funding and activities that the RCI component was supposed to implement, such as reinforcing the health surveillance system and the identification of numbers of health staff in order to provide them with ID cards (interview donor official, Kinshasa 2015-05-21). Of the £5.2 million for the RCI component, £2.8 million had been contracted through IMA, and £1.2 are yet uncontracted. Some of the funds have also gone through UNICEF and some were used for paying for a public financial management consultant based in the MoH (DFID, 2018, p. 4).

Another explanation for the slow progress in the RCI component might be the siloed approach that donors operate. One of the leading health advisors was seen by some staff member as not being very interested in addressing the governance challenges in the health sector (interview donor official, Kinshasa 2015-05-21). A report also highlighted that the DFID people engaged in the health programme to a large extent had a background as medical doctors and that they were inclined to 'prioritise saving lives today, rather than in the long-run' (DFID, 2013, p. 6). This might also help explain why the programme was mainly engaging with the Ministry of Health and to a much lesser extent with, for example, the Ministry of Budget and the Ministry of Finance.

#### **5.4.2. Donors facing resistance in the justice sector**

As we saw in the section about perceptions, the relationship between the Ministry of Justice and the donors was not always cordial. This clearly had an influence on the negotiation strategies that were being deployed, especially from the government's side. The government used different tactics to try to get what it wanted from the programme (i.e. funding for infrastructure) and avoid letting donors have much influence over policy directions and reforms.

Collaboration between donors and the government was less successful than in the health sector. Problems resulted both from the absence of an updated justice reform policy, as well as from a lack of regular consultation meetings. A joint coordination group, the CMJ, was established in 2004. However, the former Minister of Justice (Mr. Bambi) stopped the quarterly meetings, instead preferring to talk to the donors individually (interview donor representative, Stockholm, 2015-08-10). The resistance to the CMJ continued under his successor, Mrs. Matipa, with meetings held at irregular intervals.

The donors did not effectively coordinate amongst themselves according to several of my interviewees. The EU, UNDP and USAID had at times a particularly problematic relationship, which was confirmed in USAID's evaluation of their ProJustice programme (USAID, 2014b, p. 40). From my interviews and from the evaluation, it appears to have been a personality clash and competition between the donors trying to take ownership of results achieved (ibid).



### *Negotiating the PARJ and Uhaki Safi Programme*

From the outset of the two programmes, it was clear that the EU and the government had different views on the programmes, and that there was a lack of ownership by the government. The programmes were developed by a team of international experts hired by the EU. There had been some consultations at the national level, in addition to a few visits at the provincial level. However, as pointed out in the mid-term evaluation of the PARJ programme, the lack of national ownership was a problem from the start (2013). The evaluation highlights three main reasons for this: i) there was no national reform plan that the programme could align to; ii) there was a total lack of involvement and ownership from the Congolese counterparts; and iii) conceptual weaknesses in the set-up of the programme made the programme more of a support programme for the justice sector than a strong reform-oriented programme (European Commission, PARJ mid-term evaluation, 2013 pp. 8-9). This critique is based on the fact that components of the programmes are related to infrastructure and capacity-building activities, and there is much less in the programme documents about pushing for structural reforms (EU, 2014b).

From the start it seems that the government was mainly interested in the infrastructure components, while they were less interested in the training aspects of the programmes (interview donor official, Stockholm 2015-08-10; Gopa Consultants, 2016 pp. 16 & 23). The Minister was particularly interested in the reconstruction of the Luzumu prison in Bas-Congo.<sup>90</sup> The government wanted to construct it in order to lessen the burden on the central prison, Makala, in Kinshasa. Makala is currently housing around 9,000 people despite being constructed to contain only around 1,500 prisoners.<sup>91</sup> The EU Delegation in Kinshasa had initially approved the construction, but it was blocked by the European Commission in Brussels. Allegedly, the Commissioner for development cooperation at that time, Louis Michel, a former Belgian Foreign Minister who had long experience of working with Congo, was personally against construction of

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<sup>90</sup> He, and the following Ministers interest in the Luzumu prison can be noted in the fact that it was a key agenda point in four out of seven Steering Committee meetings (Gopa Consultant, 2016, pp. 16 & 23).

<sup>91</sup> In May 2017 the overcrowding of the Makala prison was partially solved, in a highly informal way, by a massive prison break, when approximately 4,500 of the 9,000 prisoners escaped from the prison overnight (Jeune Afrique, 2017). This was followed by similar mass escapes at other prisons in a number of provinces around the country.

prisons and hence blocked the proposal (interview donor official, Stockholm 2015-08-10). This was a great disappointment for the government (interview government official, Kinshasa 2015-06-19).

### *Keeping the donors at a distance*

From the start of the PARJ programme in 2010 the Ministry of Justice pro-actively tried to keep the donors at arm's length by avoiding having joint programme meetings.

For example, the EU wanted the implementing team of Gopa, the German consultancy firm that had been contracted to implement both of the EU justice programmes, to sit at the Ministry of Justice to facilitate the collaboration between the team and the staff at the Ministry of Justice. However, once the Gopa team arrived the Minister told the EU that there was no space for the team in the building. That the experts were not sitting together with the staff at the Ministry hindered an effective communication, and Gopa staff members complained that they felt rather left on their own (interview implementer, Kinshasa 2015-05-27; donor official, Stockholm 2015-08-10). One of the implementers complained about the lack of access saying:

*“The only time we had contact with the former Minister was when she wanted to have a go at us”* (interview implementer, Kinshasa 2015-05-27).

Another example was the absence of regular steering committee meetings, where broader policy and implementation issues were going to be discussed between the EU, Gopa and the Ministry. These meetings were held on a very irregular basis, and for a period of two years they almost fully stopped with resulting delays to implementation (Gopa Consultants, 2016, pp. 23 & 59). For example, the first meeting in the Uhaki Safi programme did not take place until spring 2015 when Mr. Thambwe had been appointed to be the Minister of Justice, almost 2.5 years after the programme was initiated. This lack of guidance from the government caused frustration for the programme implementers who were unsure about what to do, as suggested by the following statement from one of the implementers:

*“We were left to our own devices – without any guidance on as to what the government wanted”* (interview implementer, Kinshasa 2014-11-28).

The relationship between the EU and the MoJ deteriorated even further when the EU refused to continue financing for a coordinator for the CMJ. The person that had been appointed had been a friend of the Minister and had allegedly not had the coordination skills needed to do the job. Hence the EU wanted to replace her (Gopa Consultants, 2016; implementer, Kinshasa 2014-11-28). This led to a deadlock as the Minister allegedly threatened to end collaboration with the EU unless they continued to pay for the post (interview donor official, Kinshasa 2014-11-14), and subsequently refused to sign documents that were necessary to move the EU justice programmes forward (interview implementer, Kinshasa 2015-05-27; interview implementer, Kinshasa 2015-05-09). The breakdown in the relationship was not only limited to the EU. The Minister also refused for more than a year to meet with the head of USAID, who wanted to discuss a new programme (interview Head of Cooperation, Kinshasa 2015-07-02).

The full reasons for the Minister's refusal to sign documents related to the programmes are not known, but it is possible, based on her negative perceptions of the EU and previous disagreements with them, that the decision not to finance the person was the last straw. However, there might also have been some more strategic considerations behind it. Just like the previous Minister, she was mainly interested in the infrastructure of the justice sector. She felt that there was too much focus on training activities and not enough on infrastructure and became frustrated with the EU when they were not forthcoming in making changes to the programme (interview adviser to the Minister, Kinshasa, 2015-07-07). By stalling parts of the programmes, such as a planned training of people in the Ministry of Justice, funding was freed up that later was directed towards infrastructure programmes. For example, the Luzumu prison that had been excluded in the PARJ programme is now later being reconstructed with funding from the PARJ programme and some extra funding from Sida (Gopa Consultants, 2016, pp. ii & 116-117; interview donor official, Kinshasa 2016-11-15). The PARJ budget was also revised twice to increase the amount of funding going to infrastructure (Gopa Consultants, 2016, pp. 16 & 23).

### *Reluctance to use conditionality?*

Just as donors had been reluctant to use conditionality at the overall level, the same was true for the donors involved in the justice sector. EU officials involved in the programmes told me that:

*“If you want to get things done in Congo, you can't use conditionality”* (interview EU official, Kinshasa 2014-12-02).

What he meant was that if you add a condition and wait for it to be fulfilled, it will most likely never materialise, and your programme would never be implemented. In one of the programmes they had tried it, by having as a pre-condition for building a police academy that the government should pay for the road that was going to lead up to the building, but several months later there was no sign of the road being built. Another EU official added that even if they had applied conditionality to the programme, they would not have had enough staff to follow-up on it (interview donor official, Kinshasa 2014-12-11).

However, just as I found at the overall level, Congolese staff members working for donor agencies, as well as some of the implementers, had a divergent view and amongst the ones I interviewed there was a more positive view on it. For example, one Congolese lawyer, working for a donor agency, said:

*“The donors should push the government more, and they need to speak with one voice. There are no conditionalities attached to the programmes and that is a big problem”* (interview donor official, Goma 2015-05-15).

One of the implementers I interviewed compared it with the situation in some other countries where the EU was using as a precondition that the government should pay for parts of the programmes. She thought the same should apply for Congo (interview implementer, Kinshasa 2015-05-27).

Conditionality is, as we saw in the conceptual chapter, not only about sticks, but also about carrots. In an effort to incentivize the government to implement reforms the Swedish Embassy, which had a better relationship with Mrs. Matipa than the EU, at one point offered to top-up its contribution to the PARJ programme with an additional 8 MEUR (Sida, 2014b). According to one of the programme officers involved, the idea had been to complement the PARJ programme, which was seen as being quite infrastructure heavy, with more 'softer' issues such as training for prison wardens (interview donor official, Kinshasa 2015-05-31). However,

more than half of the top-up (53%) was earmarked for infrastructure (Sida, 2014c, 2014d). According to a person with insight into the decision-making process, the main reason had been to improve its relationship with the Minister and thereby hopefully push the reforms forward (interview donor official, Stockholm 2015-08-11). The decision-makers at the Sida HQ were not keen on granting additional funding to a programme that so far had not shown many results, and they did not approve the proposal. However, two years later the Swedish Embassy approved a smaller grant (1 230 000 Euro) for the reconstruction of Luzumu and training of prison guards, which made it possible for the PARJ programme to move forward with the prison (Gopa Consultants, 2016, p. 16).

The result of the cooperation was somewhat disappointing. The mid-term evaluation of the PARJ programme, which the government had not taken part in, despite several requests by the EU and Gopa, had shown that only 15% of the activities had been concluded at the time of the mid-term evaluation (EU, 2014b). However, in the end 94% of the funding was spent, to a large extent due to the infrastructure work (Gopa Consultants, 2016).

#### *Preparing and postponing a new programme*

Despite these difficulties in achieving results the EU, supported by Sweden and tentatively Belgium, was nonetheless keen to move on with a new programme. The idea was to put together Uhaki Safi and PARJ into one programme that would be implemented nationally, as the government had advocated for (EU, 2016, pp. 1–2). However, following increased political tensions in the country in 2015 and 2016 the donors decided to postpone the programme.<sup>92</sup> The decision was controversial within the EU and the member states. Some member states, like Sweden and Belgium, which had supported the EU justice programmes in the past were pushing for the decision. The Belgian position was taken by the Ministry of Foreign Affairs in Brussels and not in Kinshasa where part of the Embassy, in opposition to their Ministry, continued to be in favour of a continuation. The EU Commission emphasised the need for continuing the collaboration to have some influence over the Ministry of Justice. As they said: ‘we need to pay to play’

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<sup>92</sup> See for example interview EU official, Kinshasa 2016-11-15; interview donor official, Kinshasa 2016-11-17.

(suggested in a confidential report). Within the EU Delegation in Kinshasa there were also different viewpoints. Some, who saw signs of things progressing in the sector were strongly against it (interview EU official, Kinshasa 2016-11-15), while others thought it was about time (interview EU official, Kinshasa 2016-11-17). It is easy to understand both sides – after years of struggle with reluctant Ministers, the EU finally had a Minister who took decisive actions to move the programmes ahead, such as leading the development of a new national plan for reforms. However, considering the key role the Minister of Justice played in supporting President Kabila's efforts to hold on to power, it would have sent a conflicting message to launch a new programme at that particular time.

### 5.5. Local level engagement through intermediaries

Having examined the engagement strategies in the two different sectors at the national level, I will now review how the negotiations played out at the local level. As indicated earlier, the engagement at this level is rather different since almost none of the bilateral donors have any presence at the provincial and district levels. Instead the engagement with the provincial and local authorities is, to a large extent, being left to the implementing agencies contracted by the donors. It is also, as previously stated, at this level that the real governance is most visible, as I will explore in the next chapter.

Before setting up the programmes, however, donors usually conduct consultations in various provinces and districts to inform the new programming. Both DFID and EU conducted local consultations before the start of the programmes. DFID especially conducted extensive local consultations in the provinces that they had chosen for the ASSP programme. The central government was accompanying them in all the consultations to keep them fully on board (interview government official, Kinshasa 2013-03-17; interview donor official, Kinshasa 2015-04-21).

However, during my fieldvisit to Kasai-Occidental (currently Kasai central), it became clear that people at lower levels of the administration in both the health and the justice sectors felt excluded from the decision-making process as the following representation of a health zone team member in Kananga illustrates:

*“People who are involved in the programme work at the central level don't understand. They are coming with pre-made concept and are not flexible for changes. I have participated at meetings and said what I think, but things never change. The programmes cannot be changed. They are agreed at central level and then it is just for us to implement them”* (interview government official, Kananga 2015-04-15).

Hence, he was frustrated by the donors, the central government and the implementing agencies whom he felt had all arrived with preconceived plans in mind and that nothing that the people at the local level said would change that. As a consequence, he felt that the local authorities were limited to implementing a programme that had been decided elsewhere. During the interview he said that:

*“Many people are afraid to speak up and highlight issues that are not working, as everyone wants the money to continue flowing”* (interview government official, Kananga 2015-04-15).

Hence, the same mechanisms that hinder the central ministry from saying ‘no’ to the donors are, unsurprisingly, also operating at lower levels of the administration. Considering that the local level receives almost nothing from the state budget, the pressures to ‘keep the money flowing’ are likely to be even stronger.

Similar concerns were also brought up during my interviews in Goma. One provincial administrator within the justice sector expressed her frustration with being excluded by telling me:

*“Sometimes we are being consulted when the donors are developing their programmes, but usually not. It is usually at the central level that these consultations are taking place, and the central level does not always understand what the provincial level needs. It is important to listen to the local level [le bas] and see what are the needs that exist there”* (interview government official, Goma 2015-05-14).

The frustrations with lack of consultations with the local level were not limited to the provincial and local administration, but also included INGOs, as suggested by this head of an NGO collaborating with the Uhaki Safi programme in Goma:

*“Programmes like Uhaki Safi where the counterpart is the MoJ are based on an elitist system. It follows a model where the donors speak with the state, the INGOs with the local NGOs, and the local NGOs with the population. It would be important to make the consultation groups larger so that the implementers and the beneficiaries are part of the planning of the programme. But the donors are only speaking with the top of the pyramid”* (interview INGO representative, Goma 2015-05-15).

Later on in the interview he returned to the issue saying:

*“The donors could have an important role to play in getting different stakeholders together to a dialogue. They (the donors) are not doing that sufficiently well. Instead they tell the NGOs to arrange some community dialogue when the programme is already up and running” (ibid).*

Hence, according to the above representations, there was a common perception that the decisions were taken elsewhere, and the provincial and district consultations were more of a ‘window-dressing’ exercise to pretend that the local levels have been involved. To make things even worse, customary chiefs don’t seem to have been consulted. This does not necessarily suggest that donors do not want to hear what people at the local level have to say, but that a) there are structures in place that make it difficult for people at this level to engage with donors when the opportunity arises, and b) donors are not putting forth enough time and effort to properly involve, and learn, from the local level.

#### *Limited interest in coordination*

Donors also left much of the aid coordination to the implementers at the local level. These were, in turn, expressing concerns that the coordination of aid was more or less being left to them. One of the local implementers in the health sector responded to my question with some annoyance saying that:

*“Why should I coordinate here, at the provincial level – it should have been done by the donors in Kinshasa” (interview implementer, Kananga 2015-04-13).*

However, later he said that he did indeed coordinate with other implementers. But his message was clear, stating that he felt that it should be the donors at central level that are deciding upon the project that should be undertaken and ensure that the programmes are properly coordinated with other donors.

Considering that some donors were implementing rather similar programmes in the eastern part of Congo, coordination in the justice sector could be seen as more urgent in the justice sector than in the health sector where there was in principle only one major donor per health zone. Some of the donors that I spoke to in Kinshasa were concerned about coordination and brought it up in meetings with the implementers on a regular basis. But one of my interviewees doubted that they paid much more than lip-service to it (interview donor official, Goma



2015-05-10). Her doubts seem to be confirmed in an interview I did later with one of the implementers of the Uhaki Safi programme, who told me:

*“My interest is to implement the results framework that I have been contracted to perform. I am not interested in coordinating with others in the province – but I do it because the donors are telling me to do it”* (interview implementer, Goma 2015-05-13).

He was referring to the fact that coordination takes time and effort, and his priority was to implement the results framework that was in his contract with the donor – and as coordination was not a key part in this naturally this had a lower priority.

So what about coordination meetings between donors (or in this case the implementers) and the officials of the provincial and district levels? The government had in principle replicated the central donor – government coordination system at the provincial and local level both in the health and the justice sector. But the provincial health officials had problems in setting up the coordination groups due to lack of resources. The same could be observed in Goma in the justice sector. One senior civil servant in the justice department in Goma talking about coordination said that:

*“I have tried to coordinate but it is difficult as I don’t have internet connection to send around electronic invitations and no paper or fuel to go around and handing out the invitations”* (interview government official, Goma 2015-05-14).

She said that she had received support from a UN agency before, but when that stopped the coordination meetings stopped as well. Instead they were dealing with the donors on an individual basis. The lack of coordination mechanisms was confirmed by one of the implementers as well (interview implementer, Goma, 2015-05-19). Hence, local coordination seems to function equally badly or in the case of the health sector worse than at the central level. This comes back to organisational factors, and of course makes it harder for the local level administration to provide input to and oversight over donor-funded programmes. In particular in the justice sector, alternative providers, such as the customary chiefs, seem to have been totally absent in the coordination fora and in the local consultations.

*Sometimes not supporting the implementers*

Some of my interviewees who were working for implementers or who had worked in close contact with them expressed concern that donors were not always providing political support to them once the programme was operational. This seemed to be a concern of implementers both at the central and local levels and especially in the justice sector where there were political tensions (interview implementer, Kinshasa 2015-03-02; interview implementer, Goma, 2015-05-12). A former EU official told me about a situation she had experienced with the Rejusco Programme (the predecessor of the Uhaki Safi programme) where the head of the implementing office had asked the Minister of Justice to take actions regarding the threatening of rape victims. The Minister had been upset about being called up and had told the EU that this was unacceptable. Instead of backing up their implementer, he was threatened with being fired (interview independent consultant, Kinshasa, 2015-06-09). Her conclusion of the story was that donors cannot just 'throw the implementers to the wolves', leaving them alone to deal with deeply political questions and structures (ibid). In a similar vein, one of the NGO's implementing the Uhaki Safi Programme complained about being left on their own by the EU in sensitive discussions with the authorities (interview implementer, Kinshasa, 201-03-02).

In the ASSP health programme that I reviewed, this seemed to be less of a concern, probably both because it is a less politically sensitive issue, but also by virtue of the fact that there was an unusually close collaboration between the implementer, IMA, and the donor.

This thesis is not about whether it is better to implement projects through CSOs or through consultancy firms. However, one observation is that the fact that DFID had chosen IMA as the consortium lead seems to have facilitated their work both at the central and local levels. IMA has deep roots in Congolese society through their long-term engagement in the country and through their engagement with Sanru (that is linked to the Protestant Church). In addition, many of their staff members were either Congolese, or were born or had lived for many years in Congo. The implementer of the EU programme was a German consultancy firm. They did not have an office in Congo and struggled with finding consultants with the right expertise, which led to delays in the programme. Several donors and

implementers also told me that when the EU programme had started to hire Congolese staff and was headed by a person with long-term experience of working in the country, cooperation with the central and local authorities became smoother (interview donor official, Goma 2015-05-10 and implementer, Goma, 2015-05-13). Notwithstanding the importance of having staff members who know the context, which is more likely to happen with CSOs than with consultancy firms, there is an increasing trend amongst donors to contract consultancy firms rather than CSOs.

## 5.6. Conclusions

In this chapter I have reviewed the structural conditions and factors surrounding the negotiations and the strategies the different partners have used to get what they want from the engagement. As highlighted in the conceptual chapter, earlier frameworks of negotiations haven't said much about the variance in different sectors. I found that there were significant differences between the strategies that the government was using in the health sector as compared with the justice sector. The government was unwilling to make the justice sector more independent as it would entail risks for President Kabila and his close allies, who depend on a biased justice system to stay in power. Hence the stakes were high. The donors had put high hopes on reforming the justice sector, which was seen as a prerequisite for other reforms. Hence, they were keen to stay engaged with the Ministry of Justice and sometimes went to rather great lengths to do so. As Habeeb (1988) pointed out, a country's alternatives are key to understand how an apparently weaker partner manages to 'win' a negotiation. For the government the stakes were high, the survival of the state was at stake. The donors had in principle other alternatives, they could have worked with alternative justice providers, but as we will see in more detail in the next chapter, they were quite unwilling to do so. Hence, they saw few options than to try to stay engaged with the Ministry. It was only after the political situation further deteriorated that the donors postponed their planned new programme in the sector.

In the health sector, the situation was more familiar to the donors, as here the government was not putting up much resistance to the donors' reform programmes. The Ministry of Health seemed happy to let the donors substitute

for the state, although people working in the sector complained about donors trying to dictate too much. It is interesting to note that donors questioned the government's political will and ownership in both the health and the justice sectors, seeming to a certain degree to downplay the ownership that the government had actually shown in the health sector. This is linked to the point made by Whitfield and Fraser about donors often reducing the concepts of political will and ownership to a question regarding whether the government is willing to take ownership of the implementation of the donors' programmes, instead of listening closely to the viewpoints of local actors.

The political will of donors is much less discussed, but how much effort the donors are willing to invest in state-building might also be questioned. In the health sector it was clear that the donors continued to prioritise the provision of health care, which is easy to measure, rather than going through the complicated process of reforming the health system. Hence, the low levels of funding going to the central ministry. In the justice sector, despite the bottlenecks faced, the donors still refrained from conducting in-depth political economy analyses to assess possible ways forward. Also, by not fully engaging with the local level, the donors missed opportunities to better find out local priorities and concerns.

Finally, some academics, such as Whitfield and Fraser (2009), have been taking the normative approach that donors are usually imposing themselves and that the countries themselves know best what they need. This may be somewhat simplistic and naïve as one must also look into the motives of the state agents, which in a predatory state often are not aligned with what is best for the majority of the population. I also believe that donors, at least to some extent, wanted the government to take over and to give some clearer guidelines for what they were prioritising. However, having few resources, and having been forced to 'fend for themselves', the possibilities and opportunities for doing so might well be extremely limited. I also believe that the donors, at least to some further extent, would have wanted a partner with whom they could have frank and sincere discussions regarding policies and programme work. This explains their frustration over, for example, not being able to sit together with the Ministry of Justice or being able to discuss policy issues with health officials.

On the provincial and district levels a clear finding is the need for donors to engage more fully with the lower levels of the administration. The consultations that took place in the programmes that I reviewed were clearly insufficient, and often did not include alternative health and justice providers and hence failed to engage with the hybridity of the sectors. The choice of implementation partner also had a substantial influence on the programme and the engagement with the state from central level down to the local administration. DFID's health programme was implemented by an INGO with strong local roots and it was not challenged by the Ministry of Health in the same way as the German consultancy firm without experience of working in Congo had been. This is not rocket science to understand; it is, however, a matter of concern that there is a trend in the donor community to work more through consultancy firms than through international or local NGOs.

## Chapter 6: Donors and State Struggling with Hybridity and Real Governance

### 6.1. Introduction

The Congolese state is in many ways the archetype for a hybrid and negotiated state. The absence of functional state institutions in various parts of the country and the subsequent reliance on non-state institutions has meant that in reality, public services have largely been provided through real governance and hybrid institutions (Titeca, 2016). While there has been rather substantial research into how this real governance works in for example the education and security sectors, there is less known about how the system works in the health and justice sectors. In particular, we know little about whether this real governance affects the negotiations and engagement between the donors and the government, and if so how?

The fact that the relationship with the government has been a challenge for the donors, and that many of them see the Congolese state as being predatory, makes it especially interesting to see how donors have managed to recognize and respond to this real governance and ‘hybridity’ on the ground. Have they kept their state-centric lenses on, or has the predatory nature of the state made it easier for them to identify and work with other actors involved in the complex ‘eco-system’ of Congo?

In this chapter I will review how the real governance on the ground is functioning in the health and justice sectors and how the state co-exists with non-state actors like the Faith-Based Organisations (FBOs) and the customary chiefs. As I will demonstrate, the state is working closely with the FBOs in the provision of health services, although the cooperation is not always smooth. The FBOs work within the framework of the state, and the collaboration between the government and the FBOs is regulated in an agreement called ‘Convention Cadre de Partenariat’. This includes, for example, the right to part of the income of the FBOs, while on their part, the FBOs agree to follow the government’s health policies. Thus, the government has managed to stay relevant in the health sector, although a large percent of health care is being provided by the FBOs. I will also show that the FBOs are not mere service providers, they are also performing functions that are

usually associated with formal state functions, such as the actual management of the health zones. Hence it can be argued that the health system is a hybrid system where the state and the FBOs are constantly negotiating the borders of their collaboration, cooperation and autonomy.

By contrast, the justice sector is characterised by hostility on the part of the government towards the customary chiefs. Despite the fact that the government is not able to cover the country with courtrooms and prisons, the government has been less keen on accepting that customary chiefs and other non-state actors are providing justice to the population. This is mainly related to the power dynamics between the government and the customary chiefs, where the government has been keen to curtail the power and influence of the chiefs. However, it also seems to be driven by a wish to demonstrate the presence of the state in the country, by the building of courthouses and prisons. In addition, some informants believed that there was a desire by the government to be seen as 'modern' in the sense of having a written law and a judicial system similar to that of western countries. Whereas in the health system there are multiple linkages between the government and the FBOs, there are relatively few formal links between the government and the customary chiefs in the justice sector.

But where do the donors fit into this complex landscape? Do they recognize, in their state-building efforts that social services and justice are not always provided by the state, or at least not only by the state, and that there is a complex system of governance operating in the country? I will in this chapter demonstrate that there is a growing recognition on how real governance functions, and how donors are still struggling with how to work with this real governance. This, I will argue, is related to four main factors:

- Donors' somewhat limited understanding of the context.
- Donors' tendency to analyse the situation with 'state-centric lenses'.
- Normative considerations making some of the non-state actors difficult for the donors to deal with.
- Political considerations as to whether it is feasible or not for the donors to work with other actors than the state.

These factors, to varying degrees, make it more challenging for donors to fully embrace 'the real governance' and hybridity in the two different sectors.

This chapter starts by reviewing the background to real governance and hybridity in Congo in order to provide an overview of how the system has evolved over time. In section 3, I will analyse the contemporary linkages and interactions between the government and different actors. In section 4, I explore how donors have reacted and taken into account the hybridity and real governance in their state-building efforts in Congo, and whether it has influenced the negotiations between the donors and the government. Finally, I analyse the findings in relation to my conceptual framework of real governance and hybridity.

## 6.2. The reasons for the dominance of real governance and hybridity in Congo

Since Congo has long been hailed as a classic example of state failure, one might imagine that the plethora of public goods being provided by non-state actors is the result of such actors stepping in to fill the void left by a deficient state. This is true in certain cases, for example, in the number of self-defence groups that have emerged as a response to the state's failure to provide security for its population.<sup>93</sup> In other areas though, such as health, education and justice, the narrative that alternative providers have filled the void of the state is not entirely correct. Instead the hybridity and real governance that can be observed today in Congo often has its roots in the country's history and the legacy of colonisation as I will demonstrate below.

### *Faith-based organisations and colonisation*

In the provision of health care and education the Congolese state, following the Belgian model, has a long history of encouraging FBOs to be the primary providers of health and education (Leinweber, 2012). Catholic and Protestant missionaries that arrived in the country in the 19th century were, in addition to 'saving souls' by trying to convert people to Christianity, also early on engaged in providing health care and education as part of making the church appealing.

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<sup>93</sup> In some instances these groups have also taken over taxation functions and other functions that are usually related to being the functioning of the formal state.



When King Leopold established the so-called 'Congo free state', he was generally supportive of these efforts by the missionaries, and even more so when they were carried out by Catholics from Belgium. He saw them as a useful tool for establishing control over the territory, and the Catholic Church in particular became part of the pillars of the colonial regime (Seay, 2009, p. 103). In exchange for the Belgian state's 'generosity' in subsidizing their schools, the priests taught values of hard work, loyalty and basic literacy skills to Congolese whose labour was needed to build the state (Seay, 2009 pp. 103-104). In many places, Catholic services such as a dispensary or a primary school were the only social services available and the most visible manifestation of colonisation (Persyn & Ladrière, 2004 p. 67).

Though it is not unusual in Africa for church organisations to provide social services to the population, the historic trajectory and the close, formalised interaction between the state and the FBOs in Congo is rather unique (Baer, 2007 p. 9; Seay, 2009 p. 45). As Seay notes, Congo was among a few countries where the government (both colonial and later independent) allowed first the missionaries and then the national Church to organize and administer schools and health for the rest of the nation (Seay 2009 pp. 103-105). Thus, the involvement of FBOs in the health and education sectors in close collaboration with the state is nothing new in Congo, and the fact that almost 50% of health centers are run by the FBOs is a continuation of a division of labour established during colonial times that has continued ever since.

### *Justice sector and the customary chiefs*

In the justice sector the trajectory is a bit different, but as in the health sector developments have been closely linked to colonial rule. When the Belgians arrived in the Congo, the justice system was based on a customary system with institutions at different levels to handle conflicts, from the village chiefs up to royal courts.<sup>94</sup> The Belgians didn't outlaw that system but introduced a system based

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<sup>94</sup> Basically, a territory is divided into groupement, chefferies and secteurs. Secteurs are local bodies by elected chiefs, while the chefferies are led by chiefs that are appointed by the national authorities (although usually the son of the former chief) and groupements. A chefferie is usually divided into different groupements, each one administered by a chief. The groupements are usually consisting of one ethnic group only (ICG, 2013).

on civil law, that was used in Belgium (RCN, 2016 p. 81). As a consequence, a dual system in Congo, with two different legal systems has prevailed.<sup>95</sup> The customary system is unwritten, where a settlement is negotiated with the goal of restoring social cohesion in the community. The formal one remains heavily influenced by the Belgian system. For example, many laws are still the same as those inherited from the colonial system (Tekilazaya et al., 2013b; interview government official, Kinshasa 2015-05-28).

When Congo became independent in 1960 both the health system and the formal justice system were heavily dependent on Belgian administrators. The Belgians had, as we have seen in chapter 3, not allowed Congolese people to get higher education, so at independence there were no Congolese medical school graduates and with the abrupt withdrawal of the Belgians and missionaries the hospitals and centres found themselves without qualified staff (Ministry of Health, 2009, p. 3). Some of the missionaries stayed on however, and they were complemented by Haitian and other French speaking experts who were called in to fill the gaps. Simultaneously, many Congolese medical assistants were nominally upgraded to physicians (Persyn & Ladrière, 2004 p. 67). Likewise, there was not a single Congolese judge. As a consequence, Congo continued to work through forms of real governance and hybrid forms of governance. However, as I will show in the next section the government has at various times tried to impose itself and to co-opt or get rid of these parallel systems.

### *Mobutu tries to take control over the FBOs*

The Church had initially worked with the government to restore stability after the first five years of chaos that followed independence in 1960. However, growing tensions over President Mobutu's 'authenticité' process, that I described in chapter 3, led to a deep divide between the state and the Catholic Church (Seya,

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<sup>95</sup> As in other countries, the colonial administration manipulated the 'tribal system' and used it as a device for the functioning of their own, imposed, administrative system (H. Dunn, 2013). Regarding the legal system, the Congolese population was to be governed by indigenous law, unless contrary to public order or previous statute. However, in the case of criminal law everyone was subject to Congo's penal code, created by the Belgian administration (Prinsloo, 1993). As Englebert (2002) and others have observed the colonial boundaries united different governance systems and split important kingdoms. During the colonial time a dual-land system was installed in which state law governed state land (terres domaniales), and customary law governed indigenous land (terres indigènes). This legal dichotomy created a normative duality in the social significance of land. There was a de jure recognition of customary land tenure, but colonial interests always out ruled local ones (Bisoka & Classens, 2019, p. 194). The vast majority of land was declared vacant, which led to the expropriation of most of the autochthonous communities (ibid). This duality of land rights still exists and is the root to many of the land conflicts in eastern Congo.

2009 p. 106; Callaghy, 1984 pp. 304-305). Tensions had built up since 1968 when the church officials had openly criticized the injustices and corruption under Mobutu (Callaghy, 1984 p. 305). This was followed by an expression of concern in 1969 over increased authoritarian tendencies of the regime. In 1972 there followed a major confrontation over Mobutu's 'authenticité' policies, when Christian first names were banned (Callaghy, 1984 p. 305; Seya, 2009 p. 108). This disturbed the church, but larger issues were at stake. The church was worried by the state's rapidly developing political religion which portrayed Mobutu as a Messiah. The state radio had for example declared in 1972 that people should believe in the party and not the Catholic Church (Callaghy, 1984 p. 305). In 1974 the government launched a major attack, announcing that all crucifixes and photographs of the Pope should be removed from church schools, hospitals and dispensaries and replaced by photos of Mobutu. But even more devastating, Mobutu announced that religious instruction in schools was to be abolished and replaced with courses in Mobutuism (*ibid*). The final blow came when the regime announced that it was taking over the entire school system. The effect of the take-over was immediate and disastrous. The quality of education in schools plummeted as "their management was taken out of the hands of qualified church-supported professionals" (Seya, 2009 p. 108). Parents and teachers requested that the churches be allowed to take back control over the schools (Leinweber, 2012 p. 9). By 1977, Mobutu recognized that his attempt to nationalise education had failed and quietly negotiated a deal with the churches for them to take back control of the management on schools in return for signing a contract with the government, stipulating that the government was the lead in the sector. Today three quarters of students attend public 'conventionised' schools (Leinweber, 2012, p. 9; Titeca & De Herdt, 2011).<sup>96</sup>

In contrast, health centers were never nationalised. While difficult to confirm, the health centers were most likely 'saved' because they posed less of a threat to Mobutu as they were merely providing health care to the population. The schools on the other hand were 'indoctrinating' the children with religion. This was a

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<sup>96</sup> Schools managed by the FBOs, under the leadership of the state (Leinweber, 2012 p. 9).

bigger risk to Mobutu's rule and absolute influence than the administering of medicine in the health centers.

An effort to take over control of the justice sector met with equal failure. Mobutu had, throughout his 32-year long rule, an ambivalent view regarding the customary chiefs. At one point he tried to incorporate traditional leaders into his network to consolidate his power. In order to do so, he reaffirmed his policy of returning to the Zairian ancestral authenticity and recognized that traditional leaders serve as an intermediate layer between the central government and the local population (Kyamusugulwa, Hilhorst, & Jacobs, 2018, p. 251). However, Mobutu was also interested in curbing the power of the traditional chiefs, and in 1968 he introduced a new law, which aimed to progressively replace the customary justice system with the written law. This would be done by expanding the number of the so-called 'tribunaux de paix' i.e. local courts to cover the whole country. The idea was to establish a local court in all the territories, and in the major cities in the country (RCN, 2016 p. 20). However, as the law made clear, until such local courts existed in a territory, the customary system was allowed to exist (ibid). As we saw earlier, the progress on establishing the formal courts has been slow. Hence, large parts of the country have no access to the formal court system, and a large number of people continue to rely on the customary system.

### 6.3. real governance and hybridity in today's Congo

Having established the background to real governance in the country, I will now explore how the system functions today, and how the state and the non-state actors engage with each other. As I will show, the relationships between the state and the non-state actors are more amicable and more formalised in the health sector than in the justice sector.

#### *Cooperation and competition in the health sector*

FBOs, as we saw, are still very present in Congo, managing around 50% of the health centres in the country (Baer, 2007; DFID, 2012b, pp. 6–7). That faith-based networks play a major role in providing health services at the community level is nothing new and quite frequently found in Africa. However, what makes the situation in Congo differ from other countries is that in addition to providing

direct services, the FBOs are also in principle co-managing around 40% of the health zones. Hence, as Leinweber (2012) argues, the relationship between the state and the FBOs can best be described as a form of hybrid organisation whereby both parties are closely inter-linked with each other in a complex set of negotiations. The largest Church in Congo is the Catholic Church and estimates suggest that it is present in approximately 50 percent of the health zones, followed by the Protestant Church (DFID, 2012a, p. 7).

The hybridity of the system manifests itself in various ways. The first example being the complex system of co-management of the health zones. Although in principle co-management has been forbidden since 2007 it is still happening (implementer, Kinshasa 2015-03-05; FBO representative, Kinshasa 2015-05-26). Co-management refers to a situation when the church is in charge of the reference hospital with a head of hospital (which is the main hospital within a health zone), and where the health zone manager, who leads the administration of the health zone is appointed by the state. In principle these should be the same person, and when they are not the same this sometimes creates conflicts between the health zone manager, who represents the state, and the head of the hospital, who represents a FBO. In these situations, they usually try to find a compromise in which the state tries to find a health zone manager that is acceptable to the churches. In some cases, it is the churches that appoint the Head of the Zone. When a consensus cannot be reached it sometimes leads to situations where the health zone manager is literally chased away from the hospital by the Church (interview implementer, Kananga 2015-04-13; FBO representative, Kinshasa 2015-06-01).

Second, hybrid governance is also manifest in the fact that the FBOs often provide key staff members to be part of the health zone team (*Équipe Cadre de Zone de Santé*), which is the local management unit that oversees the health centers. Hence the health zone team has clear regulatory and management functions. The fact that confessional staff members, hired by the church, work inside these units (and sometimes even heading them) is an illustration of hybridity. Another case in point is that a number of health staff working in health centres run by FBOs are paid by the state but follow the rules and regulations established by the FBOs (Ministry of Health, 2007, pp. 2–3). This sometimes

leads to conflicts regarding who has the right for example to fire a person. According to 'convention' the FBOs can't fire a staff member who is financed and hired by the state, but they can 'return' the person to the state (Ministry of Health, 2007, p. 3).

Thirdly, as we saw earlier the relationship between the state and the Church organisations is regulated by a Convention<sup>97</sup> (like a contract) that according to one of my interviewees dates back from the time of the colonisation when the Belgian king signed the paper and sent it to his administrator in the country (implementer, Kinshasa 2015-06-03). The Convention has been re-negotiated several times (ibid), and it is another indicator of the hybrid character of the Congolese state in the sense that the FBOs and the state are working together in close symbiosis. Basically, the Convention states that the state should facilitate the FBO-run health centres to function, and that it should respect the independence of the FBOs (Ministry of Health, 2007). It also states that the FBO-run centres should follow national policies, and offer the government established minimum and maximum packages of services at their centres and hospitals.<sup>98</sup> The FBOs are also obliged to report health data to the state. The last revision had occurred in 2007, and it was being updated when I was doing my field research. The update was carried out within the framework of the DFID-financed ASSP programme. The main reason for the update was that the FBOs wanted the government to take a larger responsibility for the payment of staff at the FBO-run centres (interview implementer, Kinshasa 2015-06-03; FBO representative, Kinshasa 2015-06-01). The state was, however, hesitant to do so, and feared that the FBOs might add people to the pay list that are not currently working at the centres (interview implementer, Kinshasa 2015-07-07). Considering the situation in the Congo and the practice by both state actors and FBOs to add people to the centres, this doesn't seem to be an unreasonable concern by the government.<sup>99</sup> The sensitivity of determining the exact numbers of staff employed at different centres was underlined by a centrally placed FBO representative who rather dramatically, told me that: *"it is dangerous to find out the exact number of*

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<sup>97</sup> Each church signs it individually with the state, although the text is the same.

<sup>98</sup> The minimal health package is based on the government norms for what services and standards the health centres should provide.

<sup>99</sup> The exact number of health workers is not known. Efforts are on-going to have a formal registration process, but reports about large numbers of so-called 'ghost-workers' are numerous.

*staff, you can hang for that*” (interview FBO representative, Kinshasa 2015-06-01). Allegedly, many health zone managers often place relatives and friends at centres leading to overcrowding of health workers. As many of them are not on the official payroll, but are being financed by the out-of-pocket payment, it is hard to know how many they are. This practice apparently happens both at the state-run and FBO-run centres (interview implementer, Kinshasa 2015-06-03; FBO representative, Kinshasa 2015-06-01). This malpractice is causing a lot of conflicts at the local health centres, as the fees the patients pay need to be shared by an increasing number of staff members. To compensate, the user fee is sometimes increased which in turn leads to less people being able to afford to use the centre, leading to a vicious circle.

Some people in the government see the FBOs as part of the government system – ‘*They are a part of us*’ was something that one of my key government informants in the health sector insisted on (government official, Kinshasa 2015-04-23; and 2016-11-24). That this attitude was rather common was confirmed by interviewees within CSOs and implementing agencies as well.<sup>100</sup> It was also recognized that the FBOs were the ones who to a large extent, kept the health sector going, and that partnering with the FBOs was the only way to improve the governance and coverage of the health sector (Bwimana, 2017, p. 1481). The fact that many of the senior level health professionals have been trained by the FBOs also facilitates a more collaborative approach between the government and the FBOs (DFID, 2012b, pp. 26–27).

### *Competition between the state and the FBOs*

Despite the Convention and the recognition, both from the state and from the FBOs, that they needed each other, there was nevertheless some tension and disagreement between them as well as among the FBOs themselves. For example, the FBO-managed centres have historically had better access to resources which has meant that they have been able to pay salaries to a larger extent than the state. They are also better organised and usually have better trained staff. As a consequence, where people have a choice, they prefer to go

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<sup>100</sup> For example, interview with Multilateral donor, in Kinshasa 2015-03-30; and CSO representative, in Kinshasa 2015-04-09.

to FBO-run centres (interview CSO representative, Kinshasa 2015-04-09; interview consultant, Kinshasa 2015-05-08). This creates a certain jealousy amongst people in the centres that are run by the state.

The FBOs often complain that the state does not always facilitate their work, as they should according to the Convention. A common area of conflict is the collection of taxes. The FBOs are exempted from some taxes but not all, which creates confusion and opens doors for predation by state officials. It is, for example, not uncommon for state officials to try to collect taxes on medicines and equipment that the FBO centres received free of charge from donors. This sometimes takes absurd proportions where, for example, a thermostat that costs around 1 USD at the market can be taxed by up to 5 USD by state officials (interview with two FBO representatives, Kananga, 2015-04-17). Sometimes this predation puts people's lives at risk. To illustrate, the hospital in Katoka health zone, managed by the Catholic Church, at one point had to cease operations as tax authorities had claimed tax for equipment at the laboratory. When they refused to pay, the lab was simply closed by the tax authorities. As it is impossible to run a hospital without a laboratory, the whole hospital closed down and the population found itself without its main hospital for weeks (*ibid*). The conflict ended when the governor stepped in and paid the requested tax himself (*ibid*) which also shows the limited power the governors have over tax authorities.

The power balance between the state and the FBO's is constantly changing. Many of my informants stated that in the past the FBOs often wanted to operate independently from the state, whereas there now seems to be a better understanding that they both need each other. One reason for the churches' willingness to work closer with the state is that they receive less funding from abroad than they used to. Some of my informants noted that the decrease in funding had accelerated after the 2008 economic crisis in Europe and the USA (INGO representative, Kinshasa 2015-04-02; health official, Kananga, 2015-04-15).<sup>101</sup>

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<sup>101</sup> There are also significantly fewer foreign missionaries which, according to some, has further reduced the influence of the FBOs (interview donor, Kinshasa 2015-03-30). Two of my non-Congolese interviewees had actually been health zone managers in their early careers, showing that even foreigners could, in the past, take up posts managing the health zones. This was apparently not possible anymore.



### *Real governance and animosity in the Justice sector*

Just like in the health sector, non-state actors are playing a large role in the justice sector. As we saw earlier around 75% of cases concerning justice are being handled by alternative mechanisms outside the formal system (Sida, 2011, p. 4). The majority of these are handled by the customary system. However, other mechanisms, such as conflict resolution through FBOs, as well as international and local NGOs, also exist (Jacobs et al., 2017).

As mentioned already, the relationship between the government and the customary chiefs has throughout Congo's history been extremely complex and often ambiguous and hostile. The Congolese state's weakness and lack of authority to enforce its power over the chiefs has led to a situation where the boundaries between state authority and customary chiefs are not always clear. In contrast to the health sector where there are formalized links between the FBOs and the government, this is less the case in the justice sector.

One example of the unclear boundaries between the state and the customary chiefs is the control of land, which is the root cause for numerous conflicts. Despite the fact that according to Congolese legislation from 1973, the state is the owner of community land, the customary chiefs play an important role in land administration, which forms the economic basis of their legitimacy (ICG, 2013, p. 8). They are, for example, the ones that collect land taxes and they also decide who in the village is allowed to use the common land. The customary chiefs have been able to retain this key role because the 1973 law still recognizes community rights over occupation and use of land. The situation needs to be clarified by a Presidential decree, but this has never been done (International Crisis Group 2013; interview implementer, Goma 2016-10-14). The reason why Kabila has not done so is unclear, but concerns regarding how it would affect his relationship with the customary chiefs, as well as the feasibility of enforcing such a decree, are likely playing a considerable role in his decision (interview implementer, Goma 2016-10-14).

Another illustration of the blurred boundaries between the state and the customary chiefs is the situation in which although it is the government that ultimately appoints or dismisses chiefs, it is in reality not always able to enforce

this role.<sup>102</sup> This can lead to severe tensions as we can observe from the situation in Kasai. In 2016 violent conflict began in the area after the death of a chief. The population wanted his son to take over, which would be the appropriate choice according to their customs. However, the government wanted to appoint someone else that they perceived as being more loyal to it. This effort by the central state triggered a violent conflict in the area that is still ongoing; to date more than 5 000 people have been killed and 1.5 million people are displaced.

Finally, another area where the roles have not always been clearly defined is the role of the customary chiefs in the justice sector. As I explained in the introduction to this chapter, Mobutu tried in 1968 to limit the role of the chiefs in the justice sector. However, according to the law passed at that time, until a court had been established in a territory the chiefs could continue to solve legal conflicts. So far only around 20% of the planned number of courts have been built. Nonetheless, despite this slow progress in establishing courts, the government went ahead in 2013 to effectively forbid the involvement of customary chiefs in dispute resolution in a move to curb their power. The new law says nothing about the local chiefs and the customary courts (Loi organique, 2013). This has widely been interpreted by people working in the justice sector that customary chiefs no longer have the right to solve disputes within their territories (RCN, 2016 p. 81; government official, Kinshasa 2015-05-28 and implementer, Kinshasa 2015-03-12). The civil law system, however, leaves the possibility for the main judge to be supported by two experts when presiding over civil cases. Hence, a judge can choose to be accompanied by, for example, two customary chiefs that can explain and interpret local customs (interview judge, Kinshasa 2015-05-02; Loi organique 2013). However, not every judge knows about this and of those who know, not all are using this provision (interview judge, Kinshasa 2015-05-02).

### *Reasons for the persistence of real governance in the justice sector*

Despite efforts by the government to outlaw the involvement of the customary system, it still exists. There are several reasons for why this real governance prevails. One is, of course, the fact that not enough local courts have been built. Those that actually do exist often struggle to function as there are not enough

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<sup>102</sup> It is the Minister of the Interior who is responsible for the customary chiefs (ICG, 2013, p. 3).

judges in the country to fill necessary positions. According to the 2013 law, local courts (*tribanaux de paix*) should have at least three judges in order to function. Many courts, especially in more rural areas which judges tend to avoid, are struggling to keep up with this requirement.

There are, however, other reasons as well. For example, while customary courts had a presence at the subdivision level of chiefdoms and sectors, the local courts are only present in bigger towns, forcing people to travel long distances (Verweijen, 2016, p. 3). The fact that one tribunal might replace several customary courts representing different ethnic groups might also create problems (interview donor official, Goma 2015-05-15; interview donor official, Kinshasa 2015-06-09).

Apart from being far away and often seen as too expensive, the formal system is not well understood by the population. Courts have a punitive approach that is in many ways foreign to how many people in Congo perceive justice, which is to emphasise the restoration of social order and relationships (Tekilazaya et al., 2013a; interview law professor, Kinshasa 2015-06-15). The winner-takes-all nature of western judgements often sits uncomfortably with African legal traditions, which tend to be more inquisitive, mediatory and restorative. It should be noted though that this presumption has been challenged by amongst others Crook, Asante & Brobbey (2011).<sup>103</sup> Formal courts are usually also seen as being more corrupt than the customary system. A joint UNDP/Harvard Humanitarian Initiative (HHI) that is regularly measuring people's perceptions of security in the eastern part of the Congo has found that customary justice remains the mechanism best known by the population. In addition, confidence toward customary justice remains higher than the confidence people have toward the formal court system, including legal clinics and mobile civilian courts. The differences are sometimes significant. In Masisi, where insecurity is high, 79% of

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<sup>103</sup> In a study of dispute settlement institutions in Ghana they found that users looked for fairness and a balanced process in their judicial institutions. The emphasis was on making sure the 'truth should be established, and that the parties involved must acknowledge or accept it' (2011, p. 64). Sally Falk Moore argues that although harmonious settlement of conflicts are not without foundation, the idea of colonial equilibrium is a mixture of African self-idealization and colonial/anthropological political theory, and that within the local communities there are competing interests and some are more powerful than others (Falk Moore, 1992, pp. 32–33). A study in 2008 by ICTJ also found that people in general had a rather punitive view on justice (Vinck, et al., 2008). This study had, however, a strong focus on war crimes where one might reasonably expect people to have a more retributive view than for other less violent types of crimes.

respondents reported at least moderate confidence in the customary justice system, against 38% having confidence for the civilian justice system. Even where civilian courts are accessible geographically, confidence in customary justice remains higher compared to the civilian justice system (Vinck et al., 2015, pp. 1–2). Hence, the difference can't be explained by distance only. Similarly, a poll conducted in 2014 showed that on average 65% of the population in eastern Congo had little or no trust in the formal court system, whereas for the customary justice system the same figure was 34% (Harvard Humanitarian Report, 2014 p. 65). Part of the reason for low trust in the formal system is that most people believed that the courts are corrupt, that one must pay to have a court hear one's case, and that the courts are unresponsive to their needs (Harvard Humanitarian Report, 2014 p. 67). As I will show later on in this chapter, there are differences between regions in how legitimate customary chiefs are considered to be. In Kinshasa, for example, they play less of a role than in rural areas. The conflict in the east have also tended to marginalise some of them, for example, when people are being displaced or in cases where they have been co-opted by various rebel groups, or have tried to sell communal land (Vlassenroot, 2012; Mushi, 2013).

### *Fearing the consequences*

Considering the slow rollout of the formal system and the challenges it faces, many people working in or with the justice sectors were worried about the government's hard-line approach towards the customary justice system and what consequences it would have. This was clearly expressed by a senior judge from Equateur province:

*"People can't turn to the formal system because it is not existing, and they can't as usual turn to the traditional chief because he is forbidden to rule so they are left in a vacuum. I am deeply worried – what will people do – will they turn to personal vendettas?"* (interview judge, Kinshasa 2015-04-27).

One key informant who had just visited a remote area in South Kivu voiced similar concern by saying:

*"The state imposes itself on people and they are sending judges to areas where they don't speak the local languages. Nobody asks the people what they want. The justice system alters the social contract between the people and the state, and you have to mitigate the negative impacts of it. To forbid the traditional system to operate*

*will severely undermine people's confidence in the state"* (interview consultant, Kinshasa 2015-06-30).

As seen from the above statements there was a clear worry amongst people working with the justice sector, both as to how justice would be sought and how it would affect the social contract between the state and the population.

In a recent study conducted by Verweijen (2016) in eastern Congo, the judge seems to have been right to worry. She found that so-called 'popular justice', where a mob violently kills people, has increased in eastern Congo (Verweijen, 2016 p. 1). Part of this is because of the dysfunctional state-led justice. However, as she convincingly argues the rise in popular justice is not only related to malpractices in the formal system, but also relate to a wider crisis of authority resulting in part from the eroding role of customary chiefs, religious leaders and elders (ibid). Some of the customary chiefs have also undermined their own legitimacy by selling out land despite protest from the population (ICG, 2013, p. 8).

#### *Competition between the state and the customary chiefs*

We have seen that there is a hostility within the government towards the customary chiefs. But what are the main reasons for this? According to many of my Congolese respondents it is about a) curbing the power of customary chiefs; b) concerns regarding the image of the country, and c) professional norms.

The desire to curb the customary chiefs was mentioned by my interviewees as one of the main reasons as to why the government had decided to forbid the customary courts. To exclude the customary chiefs from the justice sector would be one way to take control and to impose a government led justice sector in the whole country.

Some of my interviewees also mentioned pride and images of the country as reasons why the government wanted to impose itself. As one of my interviewees pointed out:

*"The government wants to show that they are equally modern and as good as the West and hence they are imitating the western system"* (interview Congolese Lawyer, Goma, 2015-05-15).

Another one of my interviewees, a Congolese lawyer working for a bilateral donor, made the following interesting observation:

*“Justice is a key role of the state. It is more political and therefore it is much harder to work with the Ministry of Justice than for example working with the Ministry of Education and the Ministry of Health as they are primarily service providers and hence easier to work with. Justice is about the image of the country – and the government cares very much about the image of the country”* (interview donor official, Kinshasa 2015-06-09).

Finally, people trained in the written law and working in the formal justice sector often perceived the customary system as something unmodern, something that needed to be replaced. Many also complained that customary chiefs do not know the law and that they are discriminatory towards women. Only a few of the Congolese people that I interviewed in the formal justice sector saw a positive role for the customary system.

#### 6.4. Donors' struggle with the real governance and hybridity

How then have the donors reacted to this real governance on the ground, and the hybrid nature of the health and the justice sectors? Have they viewed them as important partners in the state-building process or as a threat to the authority and legitimacy of the state? As I will show in this section, the donors more easily engaged with the FBOs in the health sector than with the alternative providers in the justice sector. However, even in the health sector they tend to engage more with the state than with the FBOs, especially regarding the discussion of policy issues and the development of programme proposals. I will argue that the donors' engagement with the real governance on the ground was partly impeded by a mix of the four following factors: a) lack of understanding of the context; b) state-centric lenses; c) normative considerations; and d) political considerations.

##### **a) Understanding of the context**

An obvious challenge for donors is that fragile states are almost by definition extremely complex to understand. It might be almost impossible for donor staff that are normally in a country for only a few years to fully grasp the complex nature of the interactions between the state and the non-state providers and the linkages between them. Effective engagement with these different actors requires an in-depth understanding of how, and in what ways, they provide services; how

they exercise power within communities; and what kind of legitimacy they draw upon.

My interviews with donor representatives involved in health reforms revealed that in general they had a good knowledge regarding the important role FBOs had in health care provision and that the churches had a high degree of legitimacy in Congo. It was also widely recognized that they were working in collaboration with the state, and that a large percentage of the health centres were being run by religious organisations. However, a deeper understanding of the complexity and inter-linkages between the state and the FBO, i.e. the real governance, was often neither very well understood, nor taken into account in the programming of development aid. Some of the donors I interviewed were, for example, not aware of the Convention between the state and the churches, and how deeply involved the churches are in the management of the health zones. Hence, they were not aware that they might accidentally undermine the FBOs to the advantage of the state by focusing mainly on the state in their interactions on state-building in the health sector. Considering that the health centres run by FBOs are considered to be better, and that the FBOs enjoy higher legitimacy in comparison to the state, it is not clear that such a weakening of the FBOs will produce better health care and increase the social contract between the state and the population. As argued by amongst other McLoughlin (2015) the link between the state's performance in delivering services and its legitimacy is far from linear (McLoughlin, 2015, p. 341).

Compared to the justice sector, there was a much more open attitude amongst the donors towards working with non-state actors in the health sector. DFID, for example, in their ASSP programme, decided to implement the programme through FBOs rather than INGOs. This change was motivated by the fact that the FBOs would be staying in the country even after the donors and the INGOs would have left (DFID, business case, 2013 p. 1). However, even in this programme, it was mainly representatives from the state that were involved in the discussions on how to set up the programme, and the main leading implementer is an American FBO, although with deep roots in Congo.

Most of the donors in the justice system that I interviewed were well aware of the limitations of the formal system, and that most of the justice cases were solved

by actors other than the state. From perceptions studies being conducted by UNDP and Harvard Humanitarian Initiative, there was also an understanding that people had more confidence in the customary system than in the formal state structures. Nonetheless, moving from this realisation to actually working with the real governance on the ground seemed to be a leap too far for most of them for reasons that I will explore further below. There were only a few NGOs, such as the Belgian organisation RCN, working with alternative forms of justice, such as various forms of mediation and working with customary chiefs. There were some donors, however, that tried to include minor activities regarding customary chiefs within their overall justice reform programmes. This was especially the case in programmes that included land disputes, such as the EU's Uhaki Safi programme. However, the overall objective of donor funded programmes was still very much on strengthening the formal system.

In sum, while there was some basic understanding on the real governance and the hybrid nature of the Congolese state, perhaps it was a step too far to move from a basic understanding of the system to accepting and actively working with the real governance, especially in the justice sector. Part of the problem was the state-centric view that many donors had, which we will analyse in the next paragraph.

### **b) State-centric lenses**

That donors usually have a state-centric view has been highlighted by a number of scholars (IDS, 2010). Such state-centric lenses make it difficult for the donors to look beyond the state in their support to public services (ibid). This mind-set came out most clearly in the justice sector, which most donors see as a key function of the state. The Swedish aid agency, in expressing one of its motivations for supporting the formal justice sector, for example, stated that:

*“We cannot contribute to increased access to justice if there are no courts, no prison with adequate standards and no Ministry of Justice building to enter into” (Sida, 2014a, p. 4).*

In documents like the New Deal on Engagement with Fragile States, the introduction of a rule of law system has also been seen as a crucial step to stop violence in fragile states. It has also been viewed as a cornerstone for the establishment of democracy as well as being a prerequisite for economic



development. This viewpoint doesn't fit easily with a non-formal system that in many ways is characterised by a personal-based type of justice, ruled by unwritten laws. Most of the donors I interviewed simply could not imagine how a justice system could work if it was not based on a formal state-system with written rules and clear regulations. In the health sector the donors more intuitively seemed to understand that the government didn't have to be the only one providing health care, perhaps because it is not always the state that provides health care in their own countries. Nonetheless, they still struggled to understand the complex relationship between the FBOs and the state, and as a consequence how to engage with it.

Instead they had a rather state-centric approach also in the health sector, in which they negotiated with the state, and mainly viewed the FBOs as key providers. As a consequence, FBOs were invited to training courses, and other capacity-building activities. However, few of them worked directly with the FBOs and neither were the FBOs to any great extent involved in the conceptualization of donor programmes. According to some of the FBO representatives that I interviewed the donors tended to forget to invite FBOs to policy discussions on health-related matters, as the following representation indicates:

*“Sometimes we are invited to meetings with the donors and the government, but other times we just seem to be forgotten and the support we get from external sources is very small. I don't know why they forget us”* (Interview FBO representative, Kinshasa 2015-06-01).

This neglect of FBOs in programmes and policy formulation is problematic as they provide a lot of the health care and are also perceived to be closer to the population than the state. That the state, fully aware of the complexity of the arrangement, nonetheless preferred to keep the FBOs outside their discussions with the donors is not surprising considering the competition that exists between them. By leaving the FBOs outside the main discussions, the government gets an upper-hand and can try to control the donor resources.

### **c) Normative considerations**

Working with non-state actors also poses difficult questions as to what kind of actors donors are willing to engage with. Engaging with non-state actors can mean dealing with unsavoury characters involved in dubious activities such as

various rebel groups or deeply conservative informal institutions (Denney, 2013, p. 17). As pointed out, for example, by Meagher and Hilhorst, there is a need for a nuanced discussion regarding the merits and demerits of building on informal and local structures. They rightly argue that the idea of development from below builds on an overly simplistic idea of communities as homogeneous, and that it is ignoring processes of inequality and exclusion within communities and local structures (Hilhorst et al, 2010; Meagher, 2012). For example, women and members of ethnic minority groups might find it difficult to get their voices heard and might find themselves excluded from certain services. Donors also need to be careful not to legitimise actors that enjoy very little recognition amongst the local population.

Working with customary chiefs in the justice sector is, as we saw, not without difficulties and risks for donors. The role and the legitimacy of the customary chiefs has diminished in some parts of the country (Vlassenroot, 2012, pp. 4–5; Verweijen, 2016). In urban areas, like Kinshasa, they have more or less lost their influence (interview law professor, Kinshasa 2016-11-25). Much depends on the individual chief and what legitimacy he has amongst his population. Some of them have moved away from the villages and have lost contact with their population (INGO representative in Bukavu, via Skype, 2015-05-19). In addition, some of them are also actively fuelling conflicts in their territories by, for example, selling land without informing the communities (Vlassenroot, 2012, p. 4; International Crisis Group, 2013).

There is also, as Scheye argues, often an assumption that alternative justice providers are backward and prone to human rights violations. Donors, however, often support state institution that have less legitimacy than, for example, customary chiefs (Scheye, 2008, p. 67). In addition, the norms influencing non-state actors might not be so much different from norms impacting the practice of formal justice, when it comes to, for example, gender equality (Shearon, 2017 pp. 43-44).

In the health sector there were concerns regarding normative issues when dealing with the FBOs. For example, DFID's decision to involve FBOs more actively in their health programme was not without controversy. Some people

within the UK country office, as well as within Sida that financed a minor part of the programme, questioned whether it was a good idea to work with FBOs when issues regarding sexual and reproductive health were involved. It was feared that they would not guarantee women's and adolescents' right to reproductive health. In Sida's assessment memo for its contribution to the programme the main risk identified with the programme was that the family planning/reproductive health component was going to be implemented by FBOs (Sida, 2013a, p. 11).

#### **d) Political considerations**

Engaging with non-state actors that sometimes openly challenge the authority of the state can be very sensitive, and can be seen as interference in domestic affairs (Derks, 2012, p. 22). Donors need to consider whether their relationship with the government is strong enough to withstand the potential fallout from support for non-state security and justice actors, who may be perceived as competitors to the state (Allouche, 2013).

In the justice sector the reaction of the government was clearly a factor that needed consideration by the donors. It would have been hard for them to support a system that had more or less been pronounced illegal by the government. In addition, the relationship between the donors and the government had often been tense, and the donors faced major obstacles in moving their programmes on justice reforms forward. This made them, understandably, cautious of challenging the government, fearing that it might make the government even more uncooperative.

In private conversations, some donor representatives recognised that it was not realistic to believe that the government would be able to cover the whole country with formal courts. As a consequence, they believed that it would be necessary to involve, and build on, the traditional system. However, because of the resistance from the government, donors found it hard to officially raise the issue with the government. One illustration of this was the organisation of the 'États Généraux de la Justice'. This was the first meeting held in years to discuss justice reforms and some donors suggested that customary chiefs should be invited. The government had shown limited interest and when the Terms of Reference for the event were finalised, the customary chiefs were not even mentioned amongst the

24 different groups to be invited (Ministry of Justice, 2014). Hence, at the largest conference ever in the country to discuss the future of the justice sector, the actors that deal with the majority of cases were largely excluded. Another example where the donors had tried to engage with the real governance was the PARJ programme, where a study on alternative justice providers had been foreseen but was cancelled due to lack of interest by the Ministry of Justice (implementer, Kinshasa 2014-11-28).

Instead, the donors' main response to the lack of access to justice amongst the population was to work with the formal system to establish so-called mobile courts, where judges go out to the villages to solve disputes. Although this to a certain extent improves the access for people that live far from the courts, mobile courts are fraught with a number of weaknesses. They suffer from lack of funding from the government, which makes the approach non-sustainable; and also have structural weaknesses such as how to follow-up on cases from a distance and getting people to accept the formal system (interview law professor, Kinshasa 2015-06-15; Tekilazaya et al., 2013a).

The willingness of the donors to work with the customary system seems, however, to have increased lately as a direct result of the increased political instrumentalization of the justice sector by President Kabila (as we saw in chapter 5). Another consequence has been that some donors have started to look into the possibility of more actively engaging with alternative forms of justice such as mediation by NGOs, but also by finding linkages between the formal and informal system, for example by providing training for customary chiefs on the laws of the country. According to some of my interviewees, the Ministry of Justice had started to open up to the idea, apparently recognising that the move to the formal system perhaps had gone too quickly and that there might still be a role for the customary chiefs, although they were still more or less forbidden (interview donor official, Kinshasa 2016-11-16; donor official, Kinshasa 2016-12-01).

In the health sector, donors didn't need to take the same political considerations into account. The Ministry of Health considered the FBOs to be more or less part of the government, and although there was some competition between them, it was nothing compared to the hostility that characterised the justice sector. The

cooperation between the donors and the government was also much more amicable.

To summarise, my assessment is that donors are aware of the real governance on the ground, with the FBOs and the customary chiefs playing an important role in the provision of health and justice services to the population. However, they were clearly struggling to fully understand the nuances of the complex relationships between the state and non-state actors and how to react to the governance on the ground. In the health sector both the donors and the government were willing to engage with the FBOs, but they were being left out from some of the policy discussions. I would argue that this has mainly to do with the state-centric lenses that the donors are carrying, and which makes them overlook the full importance of the FBOs. There is also some reluctance related to normative issues such as worries that FBOs will not adhere to sexual and reproductive rights supported by donors. This might be a short-sighted way of looking at the issue, because considering the high legitimacy the FBOs have in Congo, significant advances could be made by working together with each other. In the justice sector there was a clear reluctance to accept the reality on the ground, both amongst the donors and by the government. This relates both to normative issues related to working with customary chiefs, state-centric lenses by the donors as well as political considerations. As the government has more or less forbidden the customary chiefs' involvement in the justice sector, the political price for donors to insist otherwise might have been considerable, especially considering the volatile relationship with the Ministry of Health.

## 6.5. Conclusions

It has often been commonly assumed that it has been the weakness of fragile states that has left a void that non-state actors such as community-based groups, FBOs, customary chiefs and rebel groups have been quick to fill. As a consequence, it was further thought, by supporting the building of a stronger and more capable state, these other actors would become unnecessary and would eventually disappear, or at least no longer compete with the state for authority in areas such as service delivery. This would then, the theory goes, leave the state to provide public services which would increase the legitimacy of the state, and

the country would become Weberian and similar to the western powers. However, as academics such as McLoughling (2015) and Risse & Stollenwerk (2018) have shown, this simple link between service delivery and legitimacy is problematic and establishing virtuous circles of governance in areas where the state has limited outreach is more complex. Several conditions have to be met in order to link effectiveness and legitimacy, keeping in mind that the goals and values between the government and the population might vary and these divergences must be taken into account (Risse & Stollenwerk, 2018).

The case of Congo illustrates some of the flaws in this state-building model. First of all, the state has never been strong and the other actors that have provided some services and stability to the population have not simply filled a void that has opened up due to the conflicts during the last 25 years; but many of them, such as the FBOs have been there since colonial time. The system of customary chiefs has been there even longer, pre-dating the colonial period. They are also, in many aspects, seen as having a higher legitimacy than the government. Although as Hilhorst (2010) and Meagher (2012) have pointed out, care must be taken when analysing which actors are seen as legitimate or not; and as Risse & Stellenwerk (2018) have rightly pointed out, there is no single source of legitimacy and there might be subnational variations in how legitimate an actor is perceived to be. For example, in Congo the legitimacy of customary chiefs varies substantially between one district to another, making it hard for external actors to choose which local actors to engage with.

Despite calls for more engagement with the hybrid political orders and real governance, we only have limited accounts on how donors are trying to link their state-building efforts with the hybrid nature of many of the fragile and conflict-affected states. The chapter has highlighted the key challenges that donors are facing in engaging more closely with non-state actors. These includes: i) lack of understanding of the context; ii) state-centric lenses; iii) normative considerations; and iv) political considerations. It turned out that in the justice sector the challenges of working with the customary system were to a large extent based on the donors' state-centric lenses and the government's wish to curb the system. That the government outlawed the customary system made it difficult to find entry points to initiate discussions with the customary chiefs. It took the

almost complete breakdown of cooperation between the Ministry of Justice and the donors for some of the donors to start exploring possibilities for collaboration with the customary system. In the health sector, where donors are more accustomed to work with other actors than the state, and where health care provision in their own countries is not always provided by the state, the main resistance seems to have been a clear understanding as to how linked the FBOs were with the state system. Since the churches are seen to have a high legitimacy amongst the population and larger outreach than the state, it is a missed opportunity for the donors not to engage more directly with them.

Considering that many donors regard the Congolese state to be predatory, it is even more interesting to see that they still found it hard to take off their state-centric lenses and fully embrace and engage with the real governance of service provision and justice on the ground.

The findings show that more critical thinking is needed to explore the nature of 'state' and the nature of 'government'. Considering the interlinkages between state and non-state actors there would be clear benefits to stretching the idea of the 'state' in donors' state-building efforts to incorporate more non-institutional models, and to carefully analyse which actors are deemed legitimate according to the local population and to build from that. This would also need to build upon an in-depth assessment of the interlinkages that exist between the non-state and state actors, as any foreign intervention will change the dynamic between the two.

## Chapter 7: Conclusions

### 7.1. Introduction

With an increased concentration on poverty in fragile states, together with the security threat some of these countries are perceived to pose, development aid to fragile and conflict-affected countries has risen sharply during the last decade.<sup>104</sup> This has led to an increased focus on state-building and efforts have been made to make the delivery of this aid more efficient, such as through the development of the New Deal. However, donors still struggle with how to engage with fragile and conflict-affected states.

Congo provided a highly relevant case for exploring aid negotiations in a hybrid and predatory state. The country is a typical fragile state in the sense that it has weak capacity to provide services and security to its population; the political will to introduce development reforms is complicated by neo-patrimonial structures, and it is a country in which many different actors are competing with the state for legitimacy and authority. In addition, it was also one of seven pilot countries for the implementation of the 'New Deal'. Congo shares these characteristics with a number of other fragile states. There are, however, some factors that distinguishes Congo from many of the other fragile states, most notably the fact that Congo is of major importance for the donors. Congo is, however, not unique in this sense, and there are a few other fragile states that spring to mind that are of equal, or even greater strategic interest for donors, such as Afghanistan, the Sahel countries and Somalia (due to the potential risk of terrorism), and South Sudan (due to oil). The one factor that perhaps separates Congo from these other countries, is its abundance of natural resources which make the ruling elite to a large extent independent from the Western donors.

Within this specific context this thesis explored the relationship between the donors and the government through the lens of aid negotiations. To recap the research questions that guided my research were as follows:

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<sup>104</sup> As we saw earlier, 50% of the world's poor are expected to live in fragile states by 2030.



What explains the strategies the Western donors use when engaging with the hybrid and predatory Congolese state to advance their state-building agenda and how does the Congolese government respond?

- What strategies are the donors using to create incentives amongst the ruling elite to implement their state-building policies and programmes in the health and justice sectors, and what strategies does the government use to secure their autonomy and to secure the influx of aid?
- What explains the different strategies that the Western donors are using in the two sectors and how the Congolese side has reacted to it?

In this concluding chapter, I provide a summary of the thesis, outlining its key findings. I highlight the contributions made by this thesis to literature on aid negotiations and hybridity and provide suggestions for future research. I end with an epilogue on the current relationship between the donors and the Congolese government up to September 2018.

## 7.2. Summary of the key findings

Looking at the situation from a distance one might easily have thought that donors were rather powerful and influential in Congo. The country has been plagued by conflict and the state apparatus is weak and ineffective. The national budget is small, approximately 5 billion USD, whereas the annual amount of aid is approximately between 2 and 2.5 billion USD. However, contrary to what one might expect, donors are relatively weak and the government is stronger than one might think.

In the conceptual chapter I identified a number of gaps in the literature on aid negotiations that I aimed to address in this thesis, including a) the necessity of examining both the agency of donors and the government and how they have tried to change the structural factors to their advantage; b) the need to look at negotiations in different sectors and at different levels to get a full understanding of the negotiations and engagement strategies; and c) the need to look at the hybridity of the sector and how that might affect the engagement between donors

and the government. Consequently, I developed an alternative conceptual framework.

Applying the conceptual framework, I found that the negotiation strategies in different sectors varied substantially and that very little negotiation was taking place between the donors and the authorities at the provincial and district levels. Instead, the interactions on aid at these levels were, to a large extent, left to the implementers of programmes, with consequences for ownership of the local administration and with a potential risk of making the programmes less attuned to the reality on the ground. Finally, I also found that the donors were not engaging fully with the hybridity of the sectors, partly because of their own state-centric views and partly due to resistance in the government to work with the customary chiefs in particular.

An analysis of the structural factors gave a mixed picture regarding the power between the donors and the government. Congo is in many ways dependent on aid although the absolute elite around President Kabila is not affected since they can rely on revenues from the country's vast natural resources, just like Mobutu used to do to sustain his 32-year long dictatorship. That China is investing heavily in the country further contributes to making the ruling elite less dependent on development assistance from the West. The donors believe that Congo is too important to abandon due to its geo-strategic location; the high levels of poverty; the wealth of its natural resources; and a fear that if they can't get the state to take over certain functions, Congo will continue to be a humanitarian crisis for the foreseeable future. Hence, I found that the donors are caught between geopolitical considerations and the challenges of supporting a predatory state.

Regarding structural factors at the meso- and micro level, I found that organisational factors played a certain role in the power balance between the parties, although not in the way suggested by the existing aid literature. While it is true that the donors to a large extent have the upper hand when it comes to resources and technical expertise, the government often uses non-participation as a negotiation strategy. As has also been noted by, for example, Davis (2009) and Trefon (2011), I found that the government preferred to deal with the donors on an individual basis, which was facilitated by the donors not effectively

coordinating themselves and sending out contradictory signals to the government.

Looking at perceptions, I found a very low level of trust between the government and the donors which has deep historical roots. The persistent negative attitudes and historic abuse made a frank and open relationship more difficult. Interestingly, the government to a certain extent had the attitude that Congo was more important for the donors than vice versa which made it easier for them to take a harsh attitude towards the donors. Donors seemed to have more or less capitulated and, as Marriage has pointed out, it is as though 'they have come to expect failure' (2010). An evident risk with these negative perceptions is that donors might neither fully explore the root causes of problems, nor manage to identify opportunities when they arise. It also leads to a more 'projectised' version of aid. In some fragile states with equally strong patrimonial systems, such as Afghanistan and Somalia, the donors have been more willing to experiment with multi-donor trust funds, where donors pool their resources to provide a much more coherent way to support the state structure. The multi-donor trust funds often also provide support to recurrent government expenditures such as teachers' salaries. This is not to say that aid to Afghanistan and Somalia are successful cases of development assistance for state-building, but it is interesting that donors have been more willing to provide a joint and coherent support to these other extremely weak states, but not to Congo.

I found that personal relations mattered which is unsurprising considering that aid negotiations usually take place over a long period of time. Individual relationships can, as the case of the justice sector showed, obscure the analysis of deeper structural factors. Relying on a few individuals to push through reforms is, however, a risky endeavour as progress may come to a halt as soon as key people move on.

I found that the government was using different strategies to secure resources and avoid donor-imposed conditionalities. When faced with demands from donors, the government often reacted with hostility, drawing on past injustices (colonisation), sovereignty and (mis)-using the wording in the aid effectiveness agenda. Whereas countries such as Rwanda and Uganda have carved out policy

space by using different 'image management' strategies, Congo has not done so. The main reason for this appears to be the independence of the elite who have access to more profitable resources than aid. The politics and incentives of the elite in Congo also differ quite substantially from those of a country such as Rwanda, which despite also having strong patrimonial structures has a leadership that is much more focused on a developmental agenda. The recent efforts to portray Kabila abroad as a guarantee for growth and stability is a reflection that the sanctions are actually hurting the elite by freezing access to their foreign bank accounts. Another reason the government hasn't used 'image management' is a lack of capacity and the diplomatic skills to do so. I was working in Congo when M-23 took over Goma, and could observe the well-oiled publicity machinery that Rwanda, accused of supporting the rebel group, launched. Donors that threatened to withdraw budget support were targeted by major persuasion campaigns and the head of the UN expert group, who had led the collection of evidence against Rwanda, was vilified as being a genocide supporter in an effort to disqualify the report. The Congolese government, however, didn't launch any diplomatic efforts to benefit from the situation. Hence, whilst Rwanda met with sympathy from Western embassies in Kigali where some even questioned the findings of the UN experts, the Congolese government, which was allegedly the victim of foreign aggression, met with relatively little sympathy amongst the donors in Kinshasa. This is also a reflection of the negative images that the donors have of Congo.

I found that donors have been struggling on how to engage with a counterpart that sometimes seems to be deliberately avoiding them. They have had difficulties in starting and maintaining a dialogue with the government at an overall level. The donors' strategy seemed to be to try to keep a tight control over the funding, using implementing agencies rather than channeling funding directly to the government. I found donors focusing on consultations rather than negotiations during the design phase of programmes, with the government having little influence on the design. This approach might reduce the risk of 'elite-capture' of funding, but also limits the buy-in from the government. The donors also, on the whole, have refrained from using conditionality to drive reforms and progress, considering it not to be in line with the principles of the aid effectiveness

agenda and assessing that it would not work in a country where the government doesn't seem to care about its population. The few times where some donors had tried to take a stand, like DFID with its support to the police, they had failed to be united and the outcomes had not been the ones sought. That said, I found that some Congolese donor staff members and implementers thought it would be worthwhile to explore various forms of conditionality, including requesting the government to co-finance part of the projects.

As Reno (2015) has pointed out, predatory states usually have little to gain from building an independent and strong administration and can be quite forceful in fighting to stay in power should they be challenged. This partly explains the different strategies the government has taken in the health sector compared to the justice sector. In the health sector, I found that the government had decided that it was comfortable with letting the donors substitute for the state. As a consequence, the government has shown little interest in taking over a larger share of the funding. Donors, fearing that the government wouldn't step up its funding for health, have been reluctant to threaten to withdraw aid. In many ways the situation in the health sector was much more like a 'normal' aid situation, where an aid dependent recipient is trying to secure resources and the donors are more or less dictating the terms. However, I found that for areas that are sensitive for the government, such as the justice sector where it has a vested interest in keeping it dependent on the executive branch, the strategy changes. The government tries to keep the donors distant, paying lip service to reforms and stalling implementation, with the aim of diverting funding to areas that the government prioritises, such as the building of courthouses and prisons which increase the visibility of the state but do not contribute to the independence of the judiciary. Sometimes the topic does not even have to touch on sensitive sectors for the government to react with a certain degree of hostility. For example, the conference arranged by the UN in April 2018 that sought to raise increased humanitarian funding to the country was boycotted by the government as it was unhappy at being portrayed as a high alert humanitarian crisis. Hence pride was part of its decision not to take part in the conference.

Within this context the donors feel quite powerless about how to deal with the government and feel frustrated as they lack the tools for how to engage effectively with a predatory government.

### *The question on hybridity/real governance*

I found that non-state actors have played an important role throughout the history of Congo, in taking up roles that are usually associated with the state, such as providing justice, security and social services to the population. As I demonstrated, non-state actors and the government, especially in the health sector, have collaborated closely in co-producing governance in the sector. This puts into question the sharp distinction that donors often make between the state and non-state actors. The fact that these actors have been there for a long time and are not simply filling the role of the state after the conflict years at the end of the 1990s also challenges the idea that this is a new phenomenon in fragile states.

Despite the real governance on the ground, and the donors' struggle to engage with the government, I found that donors have, to a large degree, disregarded non-state actors. They have built on the Weberian notion of statehood and focused on building state-capacity instead of taking into account all of the actors that are providing real governance in the sectors that they are engaging with.

In the health sector I found a greater acceptance, both by the government and the donors, to engage with the FBOs. However, they were seen mainly as a service provider and their role in managing part of the health zones was not fully recognized. As a consequence, I found they were rarely invited to policy discussions or programme identification processes.

In the justice sector I found a clear reluctance by the government to engage more closely with non-state actors, such as the customary chiefs. The donors also took a state-centric view of justice provision and very few engaged with the customary system. Only after a major disruption with the Ministry of Justice did some donors open up to the possibility of engaging the customary system. This is somewhat surprising considering that donors have engaged with alternative justice providers in other countries, such as Afghanistan, although it is consistent with the scepticism many donors have towards alternative justice providers. I found

that a major hinderance in Congo was in fact the government's objection to collaborating with the customary chiefs. Had the donors chosen to work with them, it would have been taken as a major provocation. To work with customary chiefs, however, would also entail risks. Perception studies show that the customary chiefs enjoy a higher degree of legitimacy than the state justice system, although this is quickly eroding in some geographical areas (Vlassenroot 2012; Verweijen 2017). Hence the legitimacy of the chiefs in different locations must be examined so as to not legitimize an actor that does not have the support or approval of the population. Donors would, therefore, need to accurately analyse the context before engaging with various actors at the provincial and district levels. This would require in-depth local knowledge that donors often lack.

### 7.3. Contribution of the thesis, policy recommendations and areas for future research

In Congo the donors find themselves between a rock and a hard place. For geopolitical reasons Congo is too important to abandon and working primarily through humanitarian actors and by-passing the state is not a sustainable solution in the long run.

The New Deal that the donors, together with developing countries, came up with has not been successful, which should come as no surprise considering that it builds on the flawed assumption that the donors and the recipients share the same goal. The principles say little about what can be done when these systems are simply too weak to channel aid effectively or when the incentives of the ruling elite are stuck against making the system work. One might argue that the aid effectiveness agenda can be described as a form of organized hypocrisy in which there is an inconsistency between rhetoric and action due to conflicting pressures (Brunsson, 2003, pp. 202-204). Hence, we get a situation in which donors might not publicly want to be seen as being sceptical towards local ownership and hence sign the declaration. On the other hand, through their actions they maintain control over the funding.

The ones left to deal with the contradictions between the reality and the principles are the 'frontline donors', that is the staff based at the country level. I found that

to a large extent they felt left to their own devices on how to solve this, without getting much guidance from their Headquarters.

The literature on predatory states also offers few guidelines on what the donors can do, except to engage with the political settlement in these countries to make the settlement more inclusive (see for example Kelsall, 2016). There are, however, some emerging discussions that might offer a way forward, such as the work by APPP that questioned the good governance agenda and advocated for the need to focus on pragmatic solutions (Crook & Booth, 2011, p. 3). Recent years have seen a sharp increase in concepts of doing development differently and adaptive ways of working by amongst others researchers linked to ODI (see, for example, Booth, 2012; Overseas Development Institute, 2016; Rao, 2014; Rocha Menocal, 2014; Tulloch, 2015). These ideas of doing development differently reject blueprints and best practice models and rest on: a) working in problem-driven and politically informed ways; b) being adaptive and working in incremental ways, as well as c) supporting changes that reflect local realities and that are locally led. This means taking a pragmatic approach and working with the grain by recognizing and adapting development to existing institutional arrangements, instead of exporting blueprints on how donors think the state should work.

Building on these recent debates on doing development differently, and on the findings from my research, some key recommendations for the donors are as follows:

1. **Work in politically informed ways at both central and local level:** Despite recent focus on thinking and working politically, there seems to be a general decline in using political economy analysis (Yanguas, 2018). This seems to be partly due to the difficulties in translating broad country or sector analysis into practical recommendations (ibid). Consistent with this finding, I found that few political economy analyses were being undertaken in Congo. One notable exception was DFID, that did conduct a number of studies including one in the health sector. In contrast, and despite the problems faced by the donors in the justice sector, no such analysis of justice provision was conducted. The political economy analysis would need to take into account political structures,



power relations and how historic legacies have shaped the motivations of the different stakeholders. The analysis should be about understanding both the formal and informal processes, agreements and practices. It is important that the political economy analysis is carried out at the sector level, and not just at the beginning of a project but throughout the implementation period. In addition, possible ‘islands of effectiveness’<sup>105</sup> (Crook, 2010; Leonard, 2010) should be identified that could serve as an entry point for commencing reforms. This would mean that donors need to substantially increase their local knowledge, and would require more staffing in fragile states as well as staff that stay longer in their posts (Allouche & Lind, 2013, pp. 34–35). Few donors seem to take into account country contexts when deciding on staffing allocations. It is instead the level of funding that determines the number of staff. This despite the fact that fragile contexts require a much closer monitoring on what is happening on the ground, as the context tends to be much more complex and the risk of creating harm larger. In such a large country as Congo, where the majority of the donor interventions are taking place in the east, posting more staff in the eastern provinces should be considered. Today only a few donor and Embassy staff are based in the eastern provinces making the relationship building with local actors difficult.

Donors should also become better at engaging with local organisations either directly or by engaging implementing partners that have a strong local presence and in-depth experience of working in the country. This would be preferable to repeatedly relying upon international firms that many donors tend to use. Those firms might well have the thematic skills, but they often lack local and context-specific knowledge that are crucial for building local support and ownership. The examples from the health sector and the justice sector point in this direction, where the implementing agency for the ASSP had much more local linkages than the consultancy firm used for the justice programmes, PARJ and Uhaki Safi. In addition, and consistent with working iteratively the implementers should not be strictly bound to a pre-set

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<sup>105</sup> It is well established that even in countries that have poor governance and weak public sectors, exceptional well-functioning government and government-supported agencies do exist.

implementation framework but have leverage to adapt the programme as circumstances change.

2. **Work with the real governance:** This means recognizing the hybridity of the state and integrating the non-state actors into the state-building process (Boege, et al., 2009, p. 19). The findings from this research show that more critical thinking is needed to explore the nature of the 'state' and the nature of 'governance'. Considering the interlinkages between state and non-state actors, there would be clear benefit in stretching the idea of the 'state' in the donors' state-building efforts to incorporate more non-institutional models. This would require the donors to abandon their state-centric lenses where donors, in the word of Duncan Green (2018) often tend to assume that there is a state that is interested in the development of the country, and instead increase their understanding of how the real governance is actually functioning. In other words, they need to get a fuller understanding of how the various actors interact with each other in a weblike society rather than using a simple and false dichotomy between state and non-state actors. This means that working with non-state actors might actually be a way to reinforce state capacity and increase the legitimacy of the state.

When working with the real governance and local actors one would not only need to identify the non-state actors that are providing services to the population and how they relate to formal state institutions, one would also need to assess their legitimacy. As Risse and Stollenwerk (2018) point out, the legitimacy of an actor in one location can be quite different from the legitimacy of the same actor in another geographical location (see for example customary chiefs whose legitimacy varies sharply from one place to another). This difference in legitimacy was apparent for customary chiefs in Congo. As a consequence, and as pointed out in the first policy recommendation, donors need to substantially increase their local knowledge and avoid having a blueprint that is expected to work in the whole country. Finally, as working more closely with alternative service providers such as customary chiefs might lead to uneasy discussions with the government, it would be important for the donors to do so in a coordinated manner.

3. **Don't abandon state-building efforts at the central level:** Working more with the local level and building state-capacity from below and up should be undertaken as a complement to central state-building as not all of the functions of a state, such as security and larger infrastructure work, can be provided by local actors. As Mushi points out from his study on insecurity and governance in South Kivu: *'when the state is totally incapable of assuming the security of its own population against external threats, when its own protective services live off the people, it is difficult for social mechanisms and local institutions alone to substitute for the lack of a decisive body capable of assuming the role of the Leviathan'* (Mushi, 2013, p. 35). The main challenge is instead to link central state-building with state-building from below as pointed out by amongst others Autesserre (2013). Also, as the health sector in Congo shows, when there is no support to the health system and its regulatory institutions, things start to fall apart. Hence, donor assistance to help strengthen the regulatory framework will continue to be necessary, which is neither the same as saying that the service itself has to be provided by the state nor that non-state actors can't be involved in the administration of the health system.
4. **Don't be too afraid of conditionality:** As experience from Congo and elsewhere has shown, conditionality is a difficult tool to use. Donors need to have the political will to enforce it, and it needs to be done in a coordinated manner together with other donors to be successful. It is often more tempting for donors to pretend that reforms are happening in order to retain access to leaders and keep the aid flowing, as the case with police reforms showed. Ideally there should also be some domestic constituency that the donors can work with. Despite these difficulties there are certain advantages with conditionality. As Uvin (1998) and Yanguas (2018) point out, aid is often seen as legitimating certain actors. Whatever form aid takes, it will have a profound effect on national and local actors, legitimising some and delegitimising others. Hence, by virtue of their presence in a country, donors often become sources of legitimation in the eyes of local actors, whether the donors want this responsibility or not (Yanguas, 2018). As a consequence, continuing giving aid to an institution that is not considered to be legitimate might

delegitimize the donors. This might explain why Congolese working for donors had a more positive view on conditionality than the international staff, and why the donors that had taken a tough stand against Kabila enjoyed high approval ratings. An interesting idea brought forward by some Congolese working for donor agencies was that local conditionality could sometimes be a tool to increase local ownership.

5. **Don't try to reform on your own:** This means engaging with a diverse array of relevant actors, including those that may be outside donors' traditional comfort zone, and trying to reconcile them into shared positive outcomes. This, as highlighted in the doing development differently literature, could mean working through local conveners that could mobilise those with a stake in progress to tackle common problems and introduce relevant change. It also means that donors should overcome their own coordination problems and the skilful way in which government leaders play them off against each other. In countries such as Afghanistan and Sudan the donors have managed to pool resources which facilitates the negotiations between the government and the donors. Such funds should also be considered in Congo, either at the national level or at sector level. Discussions have been on-going on whether to create such a fund in the health sector, but no concrete steps have so far been taken.
6. **Possible role of the private sector:** Finally one might ask oneself, could the private sector be a mean to by-pass the state and kick-start economic growth that could transform the state? Experience particularly from Asia, but also some emerging examples from Africa, shows that neo-patrimonialism can sometimes be compatible with strong economic performance (Kelsall, 2013 p. 46). This is particularly true in countries where leaders have managed to centralize the management of economic rents and orient that rent management to long-term development goals (ibid).

Considering the history of Congo, and the predatory nature of the state these favourable conditions for a private-sector led development are not present in Congo today. Instead decentralised and short-horizon management characterize the Congolese economy and there is no long-term vision for the development of the country. Lack of political stability, rampant corruption,

extremely poor infrastructure and limited access to electricity all make investing in Congo risky and expensive, both for international and local entrepreneurs. The country is ranked 184 among 190 countries in the World Bank's ease of doing business ranking (World Bank Group, 2019, p. 5).<sup>106</sup> Should, however, Congo one day change into a more developmental form of a neo-patrimonial state, there is great potential in the country's natural resources for a private-sector led growth that could benefit the whole population, and not as today, only a few.

*Areas for future research:*

The thesis contributes to enhancing our conceptual understanding of aid negotiations. I have shown that there have been gaps in previous aid negotiation literature and I proposed a new conceptual framework that covers structural factors divided into macro, meso and micro-level. It emphasises the importance of comparing negotiations between sectors and between different levels (central, provincial and district), and highlights the importance of taking into consideration the real governance in the negotiation process.

One interesting research area would be to test the conceptual framework proposed in this thesis, in order to see how donors and governments in other predatory states have negotiated with each other. It would be especially interesting to review countries without the same strategic geo-political situation and the wealth of natural resources of Congo. Countries such as for example the Central African Republic or Chad spring to mind. It would also be interesting to dwell more on perceptions and how trust can be built even in precarious situations. I found it, for example, rather astonishing that donors seemed to have more confidence in governments in Somalia and Afghanistan than in Congo.

I consider that more research on how real governance is being co-produced by the government and the non-state actors in fragile contexts is also needed, and especially on how these relationships are affected by donor interventions. There are major obstacles for donors to fully grasp how to effectively engage with non-state actors in such contexts and research into areas where it has worked would

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<sup>106</sup> The World Bank Group's ease of doing business index ranks countries against each other based on how the regulatory environment is conducive to business operations, such as protection of property rights.

be valuable. Of special interest would be studies that examine how the social contract has been affected by donors by-passing, or engaging with, both governments and non-state actors. This is an area that deserves much more attention, which also leads us back to the need to look in-depth at the legitimacy of all actors involved to identify which actors have high versus low legitimacy in the eyes of the population, and how this can be built upon in the donors' state-building efforts.

So is there any hope for Congo? I would definitely say so, but it will take time to turn the situation around. The conflicts in the eastern part of the country continue to result in significant loss of life and the displacement of large numbers of people. There is also the risk that conflict spreads to other parts of Congo, as shown by the conflict which erupted in the formerly calm Kasai Central province in 2016. Ebola is affecting parts of the country, and the international community and the government are struggling with how to contain and stop the spread of the outbreak. Corruption remains rife and politically there are many challenges to overcome in order to establish a more inclusive political settlement that is conducive to development and not only to predation by a small elite. The election of a new President, Mr Tshisekedi at the end of 2018 and thus after the completion of my thesis offers the possibility of a new type of leadership that is more transparent and less corrupt. Time will tell if he will succeed.

A key reason why I still remain hopeful for the future of the country is the energy and resilience of its population that has been through so much but continues to demonstrate incredible resourcefulness. That the country has an abundance of natural resources, which so far has mainly been used to enrich the elite, can, with the right leadership, be turned into an immense resource for financing critical public services such as health care, education, and support further investments in the development of the country including critical infrastructure that could encourage further investments to help it get on the right track.

The onus for development and change needs, as always, come from within the country itself. Assistance from the international community will, however, remain crucial for the foreseeable time. Hence it is important that the donors engage in a way that helps nudge the country in the right direction.

## Epilogue

Since my fieldwork in 2014-2016 the relationship between the donors and the government has deteriorated further. This is largely due to the postponement of the Presidential and Parliamentary elections, which has led to an increase in human rights violations and a violent crackdown on peaceful demonstrations.

At the time of writing (September 2018), it is still uncertain whether there will be any elections on 23 December 2018. How the elections unfold will be key for what will happen with the relationship between the donors and the government. The government has so far been taking some measures that, by the optimists, could be interpreted as signs that elections will indeed take place on 23 December 2018 as announced (ICG, 2018, p. i). On August 8, President Kabila, after years of speculation, finally announced that he would not stand again. Instead the PPRD will be represented by Mr. Shadary, the Permanent Secretariat of the party, and former Minister of Interior (The Economist, 2018b).

Although elections are just a few months away, there are still numerous ways in which President Kabila and his entourage could obstruct the elections. There are signs pointing in this direction. The government has started to hint that there might be problems with the electronic voting machines, which the government insisted on buying despite concerns raised by both the international community and the opposition who feared that the machines would be easy to manipulate (ICG, 2018, pp. 3–4). Another way to postpone the elections would be to refer to the costs of arranging them. Donors have been hesitant to finance elections that they believe will not be free and fair, and the government has several times stated that it intends to finance the elections on its own (e.g. Kabila's speech to the nation, February 2018). However, the amount set aside for the elections in the budget is far from enough to cover the cost (ICG, 2018, p. 5). This, together with the constrained budget, might prompt the government to declare that it is postponing the elections. This would put the donors in a difficult spot, as it is doubtful as to whether they would be willing to fill the gap. Finally, the volatile situation in Congo, with violent conflicts in several parts of the country, might also be used as a pretext for postponing the elections in the last moment.

Even if elections were to be held in December 2018, it would be questionable as to how legitimate they would be perceived, both by the Congolese population and by the international community. The playing field is not levelled, and the President's party (PPRD) holds most of the 'trump' cards. The majority party is the only party that has a presence in the whole country with nearly total control over the security forces, CENI and the judiciary (ICG, 2017). Thus, President Kabila and the ruling party can calibrate how much political space it allows to the opposition in different parts of the country. At present, the civic space has been severely restricted, and opposition leaders and human rights activists are frequently arrested (CIVICUS, 2018). One of the front figures of the opposition, Moïse Katumbi, is not able to return to the country for fear of being arrested for a court judgement that most observers see as entirely politically motivated (Reid, 2018, p. 107). The opposition is trying to unite behind one leader but has so far struggled to do so. To add to the uncertainties, the ICC in June 2018 overturned the prison sentence of Bemba, Kabila's main opponent in the 2011 elections, stating that he could not be held responsible for the behaviour of his soldiers in the Central African Republic. Upon release Bemba returned to Kinshasa declaring that he aimed to stand in the elections. CENI, however, quickly banned him from running, justifying its decision on the grounds that Bemba had still been convicted at the ICC for witness tampering (Jeune Afrique, 2018b, 2018d).

Should the elections be postponed or considered to be affected by fraud, the situation might turn more violent. People are increasingly frustrated and angry about their precarious living conditions (Berwouts, 2017 p. 160). Most people seem to hold the regime responsible for their poverty, and people are very vocal about the fact that they want Kabila to go. Beneath the surface, the discourse is violent. In a study conducted by Berwouts in 2016, a large number of people interviewed considered violence an inevitable outcome of the current situation with stalled elections (Berwouts, 2017a). The survey also found that there was a lot of anger and frustration towards Tutsis and Swahili speakers in the capital. I heard similar things in my contacts with Congolese friends and acquaintances; some of them even argued that Congo is being occupied by Rwandan Tutsis and that free elections will only be possible once the alleged occupiers are gone. This



rhetoric is indeed worrying, especially considering the extrajudicial killings of Tutsis that took place in Kinshasa in 1997.

In sharp contrast to the elections in 2006, and to a certain extent in 2011, the appetite amongst western donors to get involved in the elections has been limited. Donors have instead tried to push African actors, such as the African Union, to put pressure on President Kabila. The AU-led mediation effort in 2016, however, failed, and African leaders have been reluctant to, at least openly, criticise President Kabila. There are signs, however, that they are stepping up their efforts (ICG, 2017).

Frustrated by Kabila's holding on to power, the USA issued sanctions against certain individuals in the regime in 2016. Later the same year the EU followed suit, after having solved a disagreement between its member states.<sup>107</sup> The number of individuals on the sanctions list has over time increased, and the USA has also included a number of enterprises on its list.

The reluctance of the western donors to get too involved in Congolese politics should be seen in the light of both: i) a Congo fatigue; and ii) the reality that although Congo does matter for donors for reasons that I have reviewed in this thesis, it matters less than people in Congo generally tend to believe. Unlike other fragile states such as Iraq and Afghanistan, where the international community has been heavily involved, Congo is not posing any major security risks for the West – hence from a security and military point of view, Congo is not a top priority. Trade with Congo matters relatively little as far as Western investors and businesses are concerned. With the exception of Belgium, formal trade between Congo and its donors is relatively small, and only a relatively small number of western enterprises have large investments in Congo.<sup>108</sup> Hence the main engagement with the country is in the form of diplomacy and development assistance. Donors want stability in the country for geo-political reasons as well as from poverty alleviation and humanitarian perspectives. The importance, however, of the mineral wealth should not be underestimated as western

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<sup>107</sup> Allegedly one member state that was bidding for a large hydro-electronic project in Congo had stalled the decision.

<sup>108</sup> The major destination countries for Congolese export was in 2018 China (40.9% of total export), South Africa (30.8%), United Arab Emirates (9.2%, mainly gold export) and Tanzania (5.6%). The major countries of origin of imports 2018 were South Africa (20.9%), China (19.6%), Zambia (7.1%) and Tanzania (5.2%) (Economist Intelligence Unit, 2019, p. 6).

companies need the minerals from Congo and there is also the aspect of competition with China. A more stable Congo, with a stronger rule of law would make it easier for western companies to invest in the country. Due to these reasons, western donors continue to inject resources while persisting in their diplomatic efforts and negotiations. However, as President Kabila is well aware, there is a limit as to how much they are willing to invest scarce efforts and diplomatic energy into forcing him to leave. Hence, he can play the donors because he knows that they often come with empty threats. The pressure that the donors have mustered and the recent sanctions, however, seem to have had some effect as President Kabila has decided not to run. Whether he intends to do a 'Putin/Medvedev' change, or whether he genuinely will step down remains to be seen.

So what will the donors do in the case of further postponement or widespread fraud in the elections? The US Congress is apparently working on a bill that would extend the sanctions (speech by representative Karen Bass in Washington 2018-04-16), but whether further sanctions would have an effect is an open question. Donors, who to a large extent have continued to work in a 'business as usual' mode (with the exception of Belgium that has withdrawn aid to state institutions), would probably have to revise their strategies and further minimise their contacts with the state. We might see a situation like the one in the early 1990s when donors stopped their development assistance to the Congo and only focused on humanitarian assistance. So far, most donors have rejected such a way forward, as they believe that withdrawing all aid but humanitarian aid, would mainly hurt the population but not the political elite. The next few months will be a turbulent time. Let's hope for the sake of the Congolese people that they will get the chance to elect the leaders they want. Nobody will be able to miraculously change overnight the predatory system that permeates the Congolese society, but a new

leader might be a small step towards a better future for the hard-pressed Congolese people.<sup>109</sup>

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<sup>109</sup> After two years of delay, a general election was finally held in Congo on 30 December 2018. It was marred by election fraud and intimidation. Mr. Bemba, who had been released from the International Criminal Court, was banned from running as was the popular Mr. Katumbi who was not allowed back into the country. The opposition failed to put up a common front. As a consequence, UDPS went into the election with Mr. Félix Tshisekedi as its candidate, whereas most of the opposition united behind Mr. Martin Fayulu. President Kabila's chosen successor, Emmanuel Ramazani Shadary, was so unpopular that it would have been impossible to declare him the winner even with massive election fraud. According to the Catholic Church (which has a large network of election observers), Mr. Fayulu won the election, followed by Mr. Tshisekedi who received approximately half the number of votes that Mr. Fayulu got (Englebert, 2019, pp. 130–132). The official Election Commission (CENI) nonetheless declared Mr. Tshisekedi the winner, which has led to rumours that President Kabila had struck a deal with Tshisekedi (ibid). After initial protests by the international community, large donor countries like the USA, ended up acknowledging Tshisekedi as the President (ibid pp. 133-135). The main reason for this was apparently concerns that rejecting the election results might spark more civil strife and violence in Congo. Hence, they concluded that a peaceful transition of power, however fraudulent, was the least bad option (Englebert, 2019; Gramer & O'Donnell, 2019). After months of discussions with Kabila, whose supporters still control the senate and thereby have the right to appoint the Prime Minister, Tshisekedi could, in the end of August 2019, present the new government. The new government has 67 ministers and whether it will be effective in governing remains to be seen (Jeune Afrique, 2019). This footnote was added after the viva and before the printing of the thesis.

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## Annexes

### Annex 1. Profile of respondents<sup>110</sup>

Group of respondents	Number
Bilateral Donors, Multilateral Donors and diplomats (including national staff members)	46
Government (national and local levels)	25
Implementing Agencies (INGOs and private companies)	18
CSOs, FBOs	15
Academia, independent consultants etc.	13

### Annex 2. Attended events

Event title	Date	Convening Institution	Location	Type of event
Quarterly Review Meeting of the ASSP Programme	26-27 March, 2015	Minister of Health and DFID	Kinshasa	Quarterly Review Meeting of the ASSP programme
Provincial health meeting	17/4, 2015	Provincial Ministry of Health	Kananga	Provincial annual review and planning meeting for all the health zones in the province
EU consultation with the MoH	24/4, 2015	Minister of Health and the EU	Kinshasa	Meeting between MoH and EU consultants that were visiting the DRC to develop a new EU funded health programme.
Les Etats généraux de la justice	27 April to 2 May 2015 (I attended on the 27th of April and the 2nd May)	Ministry of Justice	Kinshasa	A national meeting with around 300 participants to analyse the problems in the justice sector and to develop a road map for reforms.
Comité de pilotage, Uhaki Safi	21/5, 2015	Ministry of Justice and the EU	Goma	Review Meeting for the Uhaki Safi Programme with the Minister of Justice, donors and key provincial and local stake-holders.

<sup>110</sup> A complete list with names, organization, date and place has been shared with the examiners.

Annual Review Meeting, ASSP programme	12/6, 2015	Minister of Health and DFID	Kinshasa	Annual Programme Review meeting of the ASSP programme
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